

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BALATON CONDOMINIUM ASSOCIATION, a  
Washington nonprofit corporation,

Plaintiff,

v.

BALATON CONDOMINIUM, LLC, a Delaware  
limited liability company; EQUITY  
RESIDENTIAL PROPERTIES MANAGEMENT  
CORP., a Delaware corporation; ERP  
OPERATING LIMITED PARTNERSHIP, an  
Illinois limited partnership; EQUITY  
RESIDENTIAL, a Maryland real estate investment  
trust; DAVID ATTLESON, individually, and  
JANE DOE ATTLESON, individually, and the  
marital community composed thereof; SUSAN  
WIEMER, individually, and JOHN DOE  
WIEMER, individually, and the marital  
community composed thereof; AMY  
HIMMERICH, individually, and JOHN DOE  
HIMMERICH, individually, and the marital  
community composed thereof; TAMMY  
SCULLY, individually, and JOHN DOE  
SCULLY, individually, and the marital community  
composed thereof; MARK GOLDSTEIN,  
individually, and JANE DOE GOLDSTEIN,  
individually, and the marital community composed  
thereof; MICHAEL MCHUGH, individually, and  
JANE DOE MCHUGH, individually, and the  
marital community composed thereof; NATALIA  
PICOULAS, individually, and JOHN DOE  
PICOULAS, individually, and the marital  
community composed thereof; JOHN DRYK,  
individually, and JANE DOE DRYK, individually,  
and the marital community composed thereof;

No.

**NOTICE OF REMOVAL OF CIVIL  
ACTION UNDER 28 U.S.C. §  
1441(b) (DIVERSITY)**

NOTICE OF REMOVAL - 1  
Case No.

**FOSTER PEPPER PLLC**  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

MARK PARRELL, individually, and JANE DOE  
PARRELL, individually, and the marital  
community composed thereof; ROBERT  
TANAKA, individually, and JANE DOE  
TANAKA, individually, and the marital  
community composed thereof; BARBARA  
SHUMAN, individually, and JOHN DOE  
SHUMAN, individually, and the marital  
community composed thereof; and DOES 1-50,

Defendants.

[King County Superior Court Case No.  
07-2-14061-1 SEA]

TO: The Honorable Judges of the United States District Court of the Western District of Washington

Pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1441, Defendants Balaton Condominium, LLC, Equity Residential Properties Management Corp., ERP Operating Limited Partnership, and Equity Residential hereby give notice of removal of the above-captioned action, currently pending in the Superior Court of King County, Washington to the United States District Court for the Western District of Washington at Seattle on the grounds of diversity jurisdiction.

The following statement is submitted pursuant to 28 U.S.C. § 1446(a):

1. On May 1, 2007, Plaintiff Balaton Condominium Association filed a Complaint with the Clerk of the Superior Court of King County, Washington (the "State Court Action"). The State Court Action was assigned Case No. 07-2-14061-1 SEA. A true and correct copy of the Case Information Coversheet, Order Setting Civil Case Schedule; Summons, and Complaint is attached as Exhibit A. No other pleadings have been filed in the State Court Action.

2. To date, on information and belief, Plaintiff has not served any of the Defendants with a copy of the summons and complaint. Since the 30 day period of time within which removal must be filed has not yet commenced, this Notice is timely filed pursuant to 28 U.S.C. § 1446(b).

3. Plaintiff's Complaint asserts claims against Defendants for (1) Breach of Express and Implied Warranty Under the Washington Condominium Act; (2) Breach of Purchase and Sale Agreement Contracts; (3) Breach of Property/Real Estate Management Contract; (4)

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1 Negligent Property/Real Estate Management; (5) Breach of Fiduciary Duty; (6) Liability Under  
 2 RCW 64.34.344 and the Declaration; (7) Violation of the Consumer Protection Act; (8)  
 3 Fraudulent Concealment; (9) Liability Under RCW 64.34.405, 64.34.410 and 64.34.415; (10)  
 4 Violation of RCW 19.40.041 and 19.40.051; (11) Relief for Mutual Mistake; and (12) Alter  
 5 Ego/Corporate Disregard Liability.

6 4. Plaintiff's prayer for relief demands damages for each claim, including treble  
 7 damages under the Consumer Protection Act "of a minimum of \$10,000 per unit for each and  
 8 every one of the 108 Project unit owners ...." Complaint at 41, IV, Prayer for Relief, paragraph  
 9 1(g). Damages under this claim alone, if proved, would exceed \$324,000. In addition, Plaintiff  
 10 seeks costs and attorney's fees. On its face, Plaintiff's complaint seeks damages in excess of  
 11 the \$75,000 jurisdictional amount for diversity jurisdiction.

12 5. Based upon information and belief and the allegations in the complaint, Plaintiff  
 13 BCL is a Washington nonprofit corporation with its principal place of business in King County.  
 14 Therefore, BCL is deemed a citizen of Washington for purposes of 28 U.S.C. § 1332. 28 U.S.C. §  
 15 1332(c)(1).

16 6. Defendant Balaton Condominium, LLC ("Balaton") is a Delaware limited  
 17 liability company. The sole member of Balaton was Equity Residential Properties Management  
 18 Corp., which is a Delaware corporation with its principal place of business in Chicago, Illinois.  
 19 Therefore, Balaton is deemed a citizen of Delaware and Illinois for purposes of 28 U.S.C. § 1332.  
 20 28 U.S.C. § 1332(c)(1).

21 7. Defendant Equity Residential Properties Management Corp. ("Equity") is a  
 22 Delaware corporation with its principal place of business in Chicago, Illinois. Therefore, Equity  
 23 is deemed a citizen of Delaware and Illinois for purposes of 28 U.S.C. § 1332. 28 U.S.C. §  
 24 1332(c)(1).

25 8. Defendant ERP Operating Limited Partnership "(ERP)" is a Illinois limited  
 26 partnership. ERP's general partner is Equity Residential, a Maryland real estate investment

NOTICE OF REMOVAL - 3  
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1 trust. ERP includes limited partners that are citizens of Washington. Plaintiff's sole basis for  
 2 suing ERP is its claim that ERP is the "alter-ego" or "co-declarant" of Balaton Condominium  
 3 LLC, ERPMC, and Equity Residential. *See LLC's Opposition to Defendant's Motion to*  
 4 *Dismiss or Stay Claims*, Case No. C07-0564 JCC, Section II.A. Such general allegations of  
 5 alter-ego type liability alone are insufficient to defeat a fraudulent joinder claim. *See Plaintiff*  
 6 *Balaton Condominium, LLC's Motion to Consolidate and Motion re: Fraudulent Joinder and*  
 7 *FRCP 21 Severance*, Case No. 07-CV-564 JCC, Section V.B., filed on May 21, 2007.

8 9. Defendant Equity Residential is a Maryland real estate investment trust business.  
 9 The trustees of Equity Residential are residents of states other than the State of Washington,  
 10 including the States of Illinois, North Carolina, Nevada, Arizona and Georgia. Therefore,  
 11 Equity Residential is deemed a citizen of Maryland and Illinois, North Carolina, Nevada,  
 12 Arizona and Georgia for purposes of 28 U.S.C. § 1332. 28 U.S.C. § 1332(c)(1).

13 10. Based on information and belief and the allegations in the complaint, Defendant  
 14 David Attleson is an individual residing in Washington State. Mr. Attleson is not a necessary  
 15 party to this litigation under Fed. R. Civ. P. 21. The Association's complaint sets forth no  
 16 allegation of wrongdoing by Mr. Attleson that is not alleged against his former employer,  
 17 Equity Residential Properties Management Corp., a non-Washington citizen. *See Declaration*  
 18 *of Mark S. Goldstein supporting Plaintiff Balaton Condominium, LLC's Opposition to*  
 19 *Defendant's Motion to Dismiss or Stay Claims*, Case No. C07-0564 JCC, Section II.A;  
 20 *Plaintiff's Motion to Consolidate and Motion re: Fraudulent Joinder and FRCP 21 Severance*,  
 21 Case No. 07-CV-564 JCC, Section V.C., filed on May 21, 2007.

22 11. Based on information and belief and the allegations in the complaint, Defendant  
 23 Susan Wiemer is an individual residing in Illinois. She is a citizen of Illinois for jurisdictional  
 24 purposes and thus diversity jurisdiction exists.

25 12. Based on information and belief and the allegations in the complaint, Defendant  
 26 Amy Himmerich is an individual residing in Washington State. Ms. Himmerich is not a

NOTICE OF REMOVAL - 4  
 Case No.

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1 necessary party to this litigation under Fed. R. Civ. P. 21. The Association's complaint sets  
2 forth no allegation of wrongdoing by Ms. Himmerich that is not alleged against her former  
3 employer, Equity Residential Properties Management Corp., a non-Washington citizen. See  
4 *Plaintiff Balaton Condominium, LLC's Opposition to Defendant's Motion to Dismiss or Stay*  
5 *Claims*, Case No. C07-0564 JCC, Section II.A; *Plaintiff's Motion to Consolidate and Motion*  
6 *re: Fraudulent Joinder and FRCP 21 Severance*, Case No. 07-CV-564 JCC, Section V.C., filed  
7 on May 21, 2007.

8 13. Based on information and belief and the allegations in the complaint, Defendant  
9 Tammy Scully is an individual residing in Illinois. She is a citizen of Illinois for jurisdictional  
10 purposes and thus diversity jurisdiction exists.

11 14. Based on information and belief and the allegations in the complaint, Defendant  
12 Mark Goldstein is an individual residing in Illinois. He is a citizen of Illinois for jurisdictional  
13 purposes and thus diversity jurisdiction exists.

14 15. Based on information and belief and the allegations in the complaint, Defendant  
15 Michael McHugh is an individual residing in Illinois. He is a citizen of Illinois for jurisdictional  
16 purposes and thus diversity jurisdiction exists.

17 16. Based on information and belief and the allegations in the complaint, Defendant  
18 Natalia Picoulas is an individual residing in Illinois. She is a citizen of Illinois for jurisdictional  
19 purposes and thus diversity jurisdiction exists.

20 17. Based on information and belief and the allegations in the complaint, Defendant  
21 John Dryk is an individual residing in Illinois. He is a citizen of Illinois for jurisdictional  
22 purposes and thus diversity jurisdiction exists.

23 18. Based on information and belief and the allegations in the complaint, Defendant  
24 Mark Parrell is an individual residing in Illinois. He is a citizen of Illinois for jurisdictional  
25 purposes and thus diversity jurisdiction exists.  
26

NOTICE OF REMOVAL - 5  
Case No.

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1           19.     Based on information and belief and the allegations in the complaint, Defendant  
2 Robert Tanaka is an individual residing in Illinois. He is a citizen of Illinois for jurisdictional  
3 purposes and thus diversity jurisdiction exists.

4           20.     Based on information and belief and the allegations in the complaint, Defendant  
5 Barbara Shuman is an individual residing in Illinois. She is a citizen of Illinois for jurisdictional  
6 purposes and thus diversity jurisdiction exists.

7           21.     The undersigned counsel represents the four business entities named defendants  
8 in this action, Balaton Condominium, LLC, Equity Residential Properties Management Corp.,  
9 ERP Operating Limited Partnership, and Equity Residential. Counsel is authorized to represent  
10 that these defendants have consented to removal. While the other defendants have not been  
11 served, the four business entities named as defendants have no reason to believe that any of the  
12 individually named defendants would object to removal, as they are nominal defendants. (See  
13 Declaration of Jeffrey G. Frank).

14           22.     Plaintiff has named additional fictitious defendants identified as "Does 1-50."  
15 Pursuant to 28 U.S.C. § 1441(a), "[f]or purposes of removal ... the citizenship of defendants sued  
16 under fictitious names shall be disregarded."

17           23.     This Notice of Removal will be promptly served upon Plaintiff's counsel and  
18 filed with the Clerk of the Superior Court of King County, Washington. See 28 U.S.C. §  
19 1446(a), (d). Defendants will also file with the Clerk of the Superior Court of King County,  
20 Washington a Notice of Filing Removal of Civil Action, pursuant to 28 U.S.C. § 1446(d). A  
21 copy of the Notice of Filing of Notice of Removal is attached hereto as Exhibit B.

22           24.     For these reasons, the diversity of citizenship requirement of 28 U.S.C. § 1332 is  
23 met and the claims may be removed to this Court under 28 U.S.C. § 1441. This action should  
24 therefore proceed in the United States District Court for the Western District of Washington, as  
25 an action properly removed.

26  
NOTICE OF REMOVAL - 6  
Case No.

FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

1 DATED this 21st day of May, 2007.

2 FOSTER PEPPER PLLC

3  
4 s/s Jeffrey G. Frank

5 Jeffrey G. Frank WSBA #16287  
6 Gregory A.V. Clark, WSBA #28832  
7 Attorneys for Defendants Balaton  
8 Condominium, LLC, Equity Residential  
9 Properties Management Corp., ERP Operating  
10 Limited Partnership, and Equity Residential

11 HARPER | HAYES PLLC

12 s/s Todd C. Hayes

13 Todd C. Hayes, WSBA No. 26361  
14 Gregory L. Harper, WSBA No. 27311  
15 Attorneys for Defendants Balaton  
16 Condominium, LLC, Equity Residential  
17 Properties Management Corp., ERP Operating  
18 Limited Partnership, and Equity Residential  
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26

NOTICE OF REMOVAL - 7  
Case No.

FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

Certificate of Service

The undersigned certifies that on Monday, May 21, 2007, I caused to be served the foregoing document to the following parties via hand delivery and electronic mail:

**NAME:** John C. Siegel  
Jesse D. Miller  
Stanislaw Ashbaugh, LLP  
4400 Columbia Center  
701 Fifth Avenue  
Seattle, WA 98104-7012  
BUSINESS (206) 386-5900  
FAX (206) 344-7400

**EMAIL ADDRESS:** [johns@stanislaw-ashbaugh.com](mailto:johns@stanislaw-ashbaugh.com)  
[jessem@stanislaw-ashbaugh.com](mailto:jessem@stanislaw-ashbaugh.com)

**REPRESENTING:** Balaton Condominium Association

DATED *May 21, 2007* in Seattle, Washington.

s/s Elen A. Sale  
Elen A. Sale

NOTICE OF REMOVAL - 8  
Case No.

FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
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# **EXHIBIT A**

FILED

FILED  
07 MAY -1 PM 3:39  
KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

KING COUNTY SUPERIOR COURT  
BARBARA MINER  
DIRECTOR & SUPERIOR CT CLERK  
SEATTLE WA

07-2-14061-1

Receipt Date	Acct. Date	Time
05/01/2007	05/01/2007	03:41 PM

Receipt/Item #	Tran-Code	Docket-Code
2007-03-08795/01	1100	\$FFR

Cashier: RCF

**KING COUNTY SUPERIOR COURT  
CASE ASSIGNMENT DESIGNATION  
and  
CASE INFORMATION COVER SHEET  
(cics)**

Paid By: STANISLAW, ASHBAUGH  
Transaction Amount: \$200.00

In accordance with LR82(e), a faulty document fee of \$15 will be assessed to new case filings missing this sheet pursuant to King County Code 4.71.100.

CASE NUMBER: **07 - 2 - 14 0 6 1 - 1 SEA**

CASE CAPTION: Balaton Condominium Association v. Balaton Condominium LLC, et al.

I certify that this case meets the case assignment criteria, described in King County LR 82(e), for the:

XX Seattle Area, defined as:

All of King County north of Interstate 90 and including all of the Interstate 90 right-of-way; all the cities of Seattle, Mercer Island, Bellevue, Issaquah and North Bend; and all of Vashon and Maury Islands.

           Kent Area, defined as:

All of King County south of Interstate 90 except those areas included in the Seattle Case Assignment Area.

Signature of Petitioner/Plaintiff

Date

or

John C. Siegel  
Signature of Attorney for  
Petitioner/Plaintiff

May 1, 2007

Date

29866

WSBA Number

**KING COUNTY SUPERIOR COURT  
CASE ASSIGNMENT DESIGNATION**

and

**CASE INFORMATION COVER SHEET**

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time but helps in forecasting judicial resources. A faulty document fee of \$15 will be assessed to new case filings missing this sheet pursuant to Administrative Rule 2 and King County Code 4.71.100.

**APPEAL/REVIEW**

- ☐ Administrative Law Review (ALR 2)\*  
☐ DOL Implied Consent—Test Refusal—only RCW 46.20.308 (DOL 2)\*  
☐ DOL- all other appeals (ALR 2) \*

**CONTRACT/COMMERCIAL**

- ☒ Breach of Contract (COM 2)\*  
☐ Commercial Contract (COM 2)\*  
☐ Commercial Non-Contract (COL 2)\*  
☐ Meretricious Relationship (MER 2)\*  
☐ Third Party Collection (COL 2)\*

**DOMESTIC RELATIONS**

- ☐ Annulment/Invalidity (INV3)\*  
with dependent children? Y / N; wife pregnant? Y / N  
☐ Child Custody (CUS 3)\*  
☐ Nonparental Custody (CUS 3)\*  
☐ Dissolution With Children (DIC 3)\*  
☐ Dissolution With No Children (DIN 3)\*  
wife pregnant? Y / N  
☐ Enforcement/Show Cause- Out of County (MSC 3)  
☐ Establish Residential Sched/Parenting Plan(PPS 3)\* ££  
☐ Establish Supprt Only (PPS 3)\* ££  
☐ Legal Separation (SEP 3)\*  
with dependent children? Y / N; wife pregnant? Y / N  
☐ Mandatory Wage Assignment (MWA 3)  
☐ Modification (MOD 3)\*  
☐ Modification - Support Only (MDS 3)\*  
☐ Out-of-state Custody Order Registration (FJU 3)  
☐ Out-of-State Support Court Order Registration (FJU 3)  
☐ Reciprocal, Respondent Out of County (ROC 3)  
☐ Reciprocal, Respondent in County (RIC 3)  
☐ Relocation Objection/Modification (MOD 3)\*

**ADOPTION/PATERNITY**

- ☐ Adoption (ADP 5)  
☐ Challenge to Acknowledgment of Paternity (PAT 5)\*  
☐ Challenge to Denial of Paternity (PAT 5)\*  
☐ Confidential Intermediary (MSC 5)  
☐ Establish Parenting Plan-Existing King County Paternity (MSC 5)\*  
☐ Initial Pre-Placement Report (PPR 5)  
☐ Modification (MOD 5)\*  
☐ Modification-Support Only (MDS 5)\*  
☐ Paternity, Establish/Disestablish (PAT 5)\*  
☐ Paternity/UIFSA (PUR 5)\*  
☐ Out-of-State Custody Order Registration (FJU 5)  
☐ Out-of-State Support Order Registration (FJU5)  
☐ Relinquishment (REL 5)  
☐ Relocation Objection/Modification (MOD 5)\*  
☐ Rescission of Acknowledgment of Paternity (PAT 5)\*  
☐ Rescission of Denial of Paternity (PAT 5)\*  
☐ Termination of Parent-Child Relationship (TER 5)

**DOMESTIC VIOLENCE/ANTIHARASSMENT**

- ☐ Civil Harassment (HAR 2)  
☐ Confidential Name Change (CHN 5)  
☐ Domestic Violence (DVP 2)  
☐ Domestic Violence with Children (DVC 2)  
☐ Foreign Protection Order (FPO 2)  
☐ Vulnerable Adult Protection (VAP 2)

££ Paternity Affidavit or Existing/Paternity is not an issue and NO other case exists in King County\* The filing party will be given an appropriate case schedule.      \*\* Case schedule will be issued after hearing and findings.

FILED  
07 MAY -1 PM 3:39  
KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

BALATON CONDOMINIUM ASSOCIATION

NO. 07-2-14061-1 SEA

Order Setting Civil Case Schedule (\*ORSCS)

vs

Plaintiff(s)

BALATON CONDOMINIUM LLC, ET AL

ASSIGNED JUDGE Hayden 16

FILE DATE: 05/01/2007

Defendant(s)

TRIAL DATE: 10/13/2008

A civil case has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

## I. NOTICES

**NOTICE TO PLAINTIFF:** The Plaintiff may serve a copy of this **Order Setting Case Schedule (Schedule)** on the Defendant(s) along with the **Summons and Complaint/Petition**. Otherwise, the Plaintiff shall serve the **Schedule** on the Defendant(s) within 10 days after the later of: (1) the filing of the **Summons and Complaint/Petition** or (2) service of the Defendant's first response to the **Complaint/Petition**, whether that response is a **Notice of Appearance**, a response, or a Civil Rule 12 (CR 12) motion. The **Schedule** may be served by regular mail, with proof of mailing to be filed promptly in the form required by Civil Rule 5 (CR 5).

*"I understand that I am required to give a copy of these documents to all parties in this case."*

Print Name

Sign Name

## I. NOTICES (continued)

### NOTICE TO ALL PARTIES:

All attorneys and parties should make themselves familiar with the King County Local Rules [KCLR] – especially those referred to in this *Schedule*. In order to comply with the *Schedule*, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [See KCLR 26], and for meeting the discovery cutoff date [See KCLR 37(g)].

### CROSSCLAIMS, COUNTERCLAIMS AND THIRD PARTY COMPLAINTS:

A filing fee of \$200 must be paid when any answer that includes additional claims is filed in an existing case.

### SHOW CAUSE HEARINGS FOR CIVIL CASES [King County Local Rule 4(g)]

A Confirmation of Joinder, Claims and Defenses or a Statement of Arbitrability must be filed by the deadline in the schedule. A review of the case will be undertaken to confirm service of the original complaint and to verify that all answers to claims, counterclaims and cross-claims have been filed. If those mandatory pleadings are not in the file, a *Show Cause Hearing* will be set before the Chief Civil or RJC judge. The Order to Show Cause will be mailed to all parties and designated parties or counsel are required to attend.

### PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:

When a final decree, judgment, or order of dismissal of all parties and claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this *Schedule* are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all parties and claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

If you miss your scheduled Trial Date, the Superior Court Clerk is authorized by KCLR 41(b)(2)(A) to present an *Order of Dismissal*, without notice, for failure to appear at the scheduled Trial Date.

### NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:

All parties to this action must keep the court informed of their addresses. When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

### ARBITRATION FILING AND TRIAL DE NOVO POST ARBITRATION FEE:

A Statement of Arbitrability must be filed by the deadline on the schedule if the case is subject to mandatory arbitration and service of the original complaint and all answers to claims, counterclaims and cross-claims have been filed. If mandatory arbitration is required after the deadline, parties must obtain an order from the assigned judge transferring the case to arbitration. Any party filing a Statement must pay a \$220 arbitration fee. If a party seeks a trial de novo when an arbitration award is appealed, a fee of \$250 and the request for trial de novo must be filed with the Clerk's Office Cashiers.

### NOTICE OF NON-COMPLIANCE FEES:

All parties will be assessed a fee authorized by King County Code 4.71.050 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Rule 41.

King County Local Rules are available for viewing at [www.metrokc.gov/kcsccl](http://www.metrokc.gov/kcsccl).

## II. CASE SCHEDULE

CASE EVENT	DEADLINE or EVENT DATE	Filing Needed
Case Filed and Schedule Issued.	Tue 05/01/2007	*
Confirmation of Service [See KCLR 4.1].	Tue 05/29/2007	*
Last Day for Filing Statement of Arbitrability without a Showing of Good Cause for Late Filing [See KCLMAR 2.1(a) and Notices on Page 2]. <b>\$220 arbitration fee must be paid</b>	Tue 10/09/2007	*
<b>DEADLINE</b> to file Confirmation of Joinder if not subject to Arbitration. [See KCLR 4.2(a) and Notices on Page 2]. <b>Show Cause hearing will be set if Confirmation is not filed, or if the Confirmation does not have all signatures, or if all answers have not been filed, or judgment on default has not been filed, or Box 2 is checked.</b>	Tue 10/09/2007	*
<b>DEADLINE</b> for Hearing Motions to Change Case Assignment Area. [See KCLR 82(e)]	Tue 10/23/2007	
<b>DEADLINE</b> for Disclosure of Possible Primary Witnesses [See KCLR 26(b)].	Mon 05/12/2008	
<b>DEADLINE</b> for Disclosure of Possible Additional Witnesses [See KCLR 26(b)].	Mon 06/23/2008	
<b>DEADLINE</b> for Jury Demand [See KCLR 38(b)(2)].	Mon 07/07/2008	*
<b>DEADLINE</b> for Setting Motion for a Change in Trial Date [See KCLR 40(e)(2)].	Mon 07/07/2008	*
<b>DEADLINE</b> for Discovery Cutoff [See KCLR 37(g)].	Mon 08/25/2008	
<b>DEADLINE</b> for Engaging in Alternative Dispute Resolution [See KCLR 16(c)].	Mon 09/15/2008	
<b>DEADLINE</b> for Exchange Witness & Exhibit Lists & Documentary Exhibits [See KCLR 16(a)(4)].	Mon 09/22/2008	
<b>DEADLINE</b> to file Joint Confirmation of Trial Readiness [See KCLR 16(a)(2)].	Mon 09/22/2008	*
<b>DEADLINE</b> for Hearing Dispositive Pretrial Motions [See KCLR 56; CR 56].	Mon 09/29/2008	
Joint Statement of Evidence [See KCLR 16(a)(5)].	Mon 10/06/2008	*
Trial Date [See KCLR 40].	Mon 10/13/2008	

## III. ORDER

Pursuant to King County Local Rule 4 [KCLR 4], IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in Local Rule 4(g) and Rule 37 of the Superior Court Civil Rules, may be imposed for non-compliance. It is FURTHER ORDERED that the party filing this action must serve this *Order Setting Civil Case Schedule* and attachment on all other parties.

DATED: 05/01/2007

  
\_\_\_\_\_  
PRESIDING JUDGE

**IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE**

**READ THIS ORDER PRIOR TO CONTACTING YOUR ASSIGNED JUDGE**

**This case is assigned to the Superior Court Judge whose name appears in the caption of this Schedule. The assigned Superior Court Judge will preside over and manage this case for all pre-trial matters.**

**COMPLEX LITIGATION:** If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

**The following procedures hereafter apply to the processing of this case:**

**APPLICABLE RULES:**

a. Except as specifically modified below, all the provisions of King County Local Rules 4 through-26 shall apply to the processing of civil cases before Superior Court Judges.

**CASE SCHEDULE AND REQUIREMENTS:**

**A. Show Cause Hearing:** A Show Cause Hearing will be held before the Chief Civil/Chief RJC judge if the case does not have confirmation of service on all parties, answers to all claims, crossclaims, or counterclaims as well as the confirmation of joinder or statement of arbitrability filed before the deadline in the attached case schedule. All parties will receive an *Order to Show Cause* that will set a specific date and time for the hearing. Parties and/or counsel who are required to attend will be named in the order.

**B. Pretrial Order:** An order directing completion of a Joint Confirmation of Trial Readiness Report will be mailed to all parties approximately six (6) weeks before trial. **This order will contain deadline dates for the pretrial events listed in King County Local Rule 16:**

- 1) Settlement/Mediation/ADR Requirement;
- 2) Exchange of Exhibit Lists;
- 3) Date for Exhibits to be available for review;
- 4) Deadline for disclosure of witnesses;
- 5) Deadline for filing Joint Statement of Evidence;
- 6) Trial submissions, such as briefs, Joint Statement of Evidence, jury instructions;
- 7) voir dire questions, etc;
- 8) Use of depositions at trial;
- 9) Deadlines for nondispositive motions;
- 10) Deadline to submit exhibits and procedures to be followed with respect to exhibits;
- 11) Witnesses -- identity, number, testimony;

**C. Joint Confirmation regarding Trial Readiness Report:** No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report setting forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g. interpreters, equipment), etc. If parties wish to request a CR 16 conference, they must contact the assigned court.

Plaintiff/petitioner's counsel is responsible for contacting the other parties regarding said report.

**D. Settlement/Mediation/ADR:**

**1) Forty five (45) days before the Trial Date,** counsel for plaintiff shall submit a written settlement demand. Ten (10) days after receiving plaintiff's written demand, counsel for defendant shall respond (with a counteroffer, if appropriate).

**2) Twenty eight (28) days before the Trial Date,** a settlement/mediation/ADR conference shall have been held. **FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.**

**E. Trial:** Trial is scheduled for 9:00 a.m. on the date on the *Schedule* or as soon thereafter as convened by the court. The Friday before trial, the parties should access the King County Superior Court website at [www.metrokc.gov/kcsc](http://www.metrokc.gov/kcsc) to confirm trial judge assignment. Information can also be obtained by calling (206) 205-5984.



**MOTIONS PROCEDURES:**

**A. Noting of Motions**

**Dispositive Motions:** All Summary Judgment or other motions that dispose of the case in whole or in part will be heard with oral argument before the assigned judge. The moving party must arrange with the courts a date and time for the hearing, consistent with the court rules.

King County Local Rule 7 and King County Local Rule 56 govern procedures for all summary judgment or other motions that dispose of the case in whole or in part. The local rules can be found at [www.metrokc.gov/kcsccl](http://www.metrokc.gov/kcsccl).

**Nondispositive Motions:** These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the *Note for Motion* should state "Without Oral Argument." King County Local Rule 7 governs these motions, which include discovery motions. The local rules can be found at [www.metrokc.gov/kcsccl](http://www.metrokc.gov/kcsccl).

Motions in Family Law Cases not involving children: Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions Calendar. King County Local Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at [www.metrokc.gov/kcsccl](http://www.metrokc.gov/kcsccl).

**Emergency Motions:** Emergency motions will be allowed only upon entry of an *Order Shortening Time*. However, emergency discovery disputes may be addressed by telephone call, and without written motion, if the judge approves.

**Filing of Documents** All original documents must be filed with the Clerk's Office. *The working copies of all documents in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge.* The assigned judge's working copy must be delivered to his/her courtroom or to the judges' mailroom. Do not file working copies with the Motions Coordinator, except those motions to be heard on the Family Law Motions Calendar, in which case the working copies should be filed with the Family Law Motions Coordinator.

**Original Proposed Order:** Each of the parties must include in the working copy materials submitted on any motion an original proposed order sustaining his/her side of the argument. Should any party desire a copy of the order as signed and filed by the judge, a preaddressed, stamped envelope shall accompany the proposed order.

**Presentation of Orders:** All orders, agreed or otherwise, must be presented to the assigned judge. If that judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the assigned judge or in the Ex Parte Department. Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. If final orders and/or formal proof are entered in the Ex Parte Department, counsel is responsible for providing the assigned judge with a copy.

**C. Form:** Memoranda/briefs for matters heard by the assigned judge may not exceed twenty four (24) pages for dispositive motions and twelve (12) pages for nondispositive motions, unless the assigned judge permits over-length memoranda/briefs in advance of filing. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PETITIONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.



PRESIDING JUDGE



FILED  
07 MAY -1 PM 3:39  
KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

MICHAEL C. HAYDEN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

BALATON CONDOMINIUM ASSOCIATION,  
a Washington nonprofit corporation,

NO.

Plaintiff,

07 - 2 - 14 0 6 1 - 1 SEA

v.

SUMMONS

BALATON CONDOMINIUM, LLC, a  
Delaware limited liability company; EQUITY  
RESIDENTIAL PROPERTIES  
MANAGEMENT CORP., a Delaware  
corporation; ERP OPERATING LIMITED  
PARTNERSHIP, an Illinois limited partnership;  
EQUITY RESIDENTIAL, a Maryland real  
estate investment trust; DAVID ATTLESON,  
individually, and JANE DOE ATTLESON,  
individually, and the marital community  
composed thereof; SUSAN WIEMER,  
individually, and JOHN DOE WIEMER,  
individually, and the marital community  
composed thereof; AMY HIMMERICH,  
individually, and JOHN DOE HIMMERICH,  
individually, and the marital community  
composed thereof; TAMMY SCULLY,  
individually, and JOHN DOE SCULLY,  
individually, and the marital community  
composed thereof; MARK GOLDSTEIN,  
individually, and JANE DOE GOLDSTEIN,  
individually, and the marital community  
composed thereof; MICHAEL MCHUGH,  
individually, and JANE DOE MCHUGH,  
individually, and the marital community

X:\CLIENT\0412517546\Pleadings\PLD Summons.doc  
SUMMONS - 1

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LAWYERS

701 Fifth Avenue, Suite 4400  
Seattle WA 98104-7012  
(206) 386-5900 Fax (206) 344-7400

composed thereof; NATALIA PICOULAS, individually, and JOHN DOE PICOULAS, individually, and the marital community composed thereof; JOHN DRYK, individually, and JANE DOE DRYK, individually, and the marital community composed thereof; MARK PARRELL, individually, and JANE DOE PARRELL, individually, and the marital community composed thereof; ROBERT TANAKA, individually, and JANE DOE TANAKA, individually, and the marital community composed thereof; BARBARA SHUMAN, individually, and JOHN DOE SHUMAN, individually, and the marital community composed thereof; and DOES 1-50,

Defendants.

TO: ALL NAMED DEFENDANTS ABOVE

A lawsuit has been started against you in the above-entitled Court by Plaintiff Balaton Condominium Association. Plaintiff's claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the Plaintiff within 20 days after the service of this Summons if served upon you within the state of Washington, or 60 days if served upon you outside the state of Washington, including the day of service, or a default judgment may be entered against you without notice. A default judgment is one where Plaintiff is entitled to what it asks for because you have not responded. If you serve a notice of appearance on the undersigned attorney, you are entitled to notice before a default judgment may be entered.

You may demand that the Plaintiff file this lawsuit with the Court. If you do so, the demand must be in writing and must be served upon the undersigned attorney for the Plaintiff

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SUMMONS - 2

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1 at the address below stated. Within 14 days after you serve the demand, the Plaintiff must  
2 file this lawsuit with the Court, or the service on you of this Summons and Complaint will be  
3 void.

4 If you wish to seek the advice of an attorney in this matter, you should do so promptly  
5 so that your written response, if any, may be served on time.

6 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the  
7 state of Washington.

8  
9 DATED this 1 day of May, 2007.

10 STANISLAW ASHBAUGH, LLP

11  
12 By 

13 John C. Siegel, WSBA# 29866  
14 Attorneys for Plaintiff  
15  
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18  
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24 X:\CLIENT\04125\7546\Pleadings\PLD Summons.doc  
SUMMONS - 3

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FILED  
07 MAY -1 PM 3:39  
KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

MICHAEL C. HAYDEN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

BALATON CONDOMINIUM ASSOCIATION,  
a Washington nonprofit corporation,

Plaintiff,

v.

BALATON CONDOMINIUM, LLC; a  
Delaware limited liability company; EQUITY  
RESIDENTIAL PROPERTIES  
MANAGEMENT CORP., a Delaware  
corporation; ERP OPERATING LIMITED  
PARTNERSHIP, an Illinois limited partnership;  
EQUITY RESIDENTIAL, a Maryland real  
estate investment trust; DAVID ATTLESON,  
individually, and JANE DOE ATTLESON,  
individually, and the marital community  
composed thereof; SUSAN WIEMER,  
individually, and JOHN DOE WIEMER,  
individually, and the marital community  
composed thereof; AMY HIMMERICH,  
individually, and JOHN DOE HIMMERICH,  
individually, and the marital community  
composed thereof; TAMMY SCULLY,  
individually, and JOHN DOE SCULLY,  
individually, and the marital community  
composed thereof; MARK GOLDSTEIN,  
individually, and JANE DOE GOLDSTEIN,  
individually, and the marital community  
composed thereof; MICHAEL MCHUGH,  
individually, and JANE DOE MCHUGH,  
individually, and the marital community

07-2-14061-1 SEA  
No.

PLAINTIFF'S COMPLAINT FOR:

- (1) BREACH OF EXPRESS AND  
IMPLIED WARRANTY  
UNDER THE WASHINGTON  
CONDOMINIUM ACT;
- (2) BREACH OF PURCHASE AND  
SALE AGREEMENT  
CONTRACTS;
- (3) BREACH OF  
PROPERTY/REAL ESTATE  
MANAGEMENT CONTRACT;
- (4) NEGLIGENT  
PROPERTY/REAL ESTATE  
MANAGEMENT;
- (5) BREACH OF FIDUCIARY  
DUTY;
- (6) LIABILITY UNDER RCW  
64.34.344 AND THE  
DECLARATION;
- (7) VIOLATION OF THE  
CONSUMER PROTECTION  
ACT;
- (8) FRAUDULENT  
CONCEALMENT;
- (9) LIABILITY UNDER RCW  
64.34.405, 64.34.410 AND  
64.34.415;
- (10) VIOLATION OF RCW

COMPLAINT - 1

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composed thereof; NATALIA PICOULAS, individually, and JOHN DOE PICOULAS, individually, and the marital community composed thereof; JOHN DRYK, individually, and JANE DOE DRYK, individually, and the marital community composed thereof; MARK PARRELL, individually, and JANE DOE PARRELL, individually, and the marital community composed thereof; ROBERT TANAKA, individually, and JANE DOE TANAKA, individually, and the marital community composed thereof; BARBARA SHUMAN, individually, and JOHN DOE SHUMAN, individually, and the marital community composed thereof; and DOES 1-50,

Defendants.

19.40.041 AND 19.40.051;  
(11) RELIEF FOR MUTUAL MISTAKE; AND  
(12) ALTER EGO/CORPORATE DISREGARD LIABILITY

Plaintiff Balaton Condominium Association (the "Association") hereby asserts the following:

#### I. PARTIES

1. Pursuant to a Condominium Declaration for Balaton Condominium Homes (the "Declaration") and its Articles of Incorporation, the Association, a Washington nonprofit corporation, was established under the Washington Condominium Act, RCW 64.34 *et seq.*, as the unit owners association for the Balaton Condominium Homes conversion project (the "Condominium" or "Project"). Pursuant to RCW 64.34.304, 64.34.328 and/or the Declaration, the Association has the duty to maintain, repair and replace all of the Common Elements and Limited Common Elements and other unit owner/Association member property located in and on the Project, and has the duty to repair, replace and restore damage to the Project.

2. Pursuant to RCW 64.34.304(1)(d), the Association has the right to institute litigation, "in its own name on behalf of itself or two or more unit owners on matters

COMPLAINT - 2

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1 affecting the condominium." The Association is instituting this action pursuant to that statute,  
 2 on behalf of itself and also on behalf of all of the Balaton unit owners on matters affecting  
 3 the Association and the Condominium.

4       3.       BALATON CONDOMINIUM, LLC ("Balaton") purports to be a Delaware  
 5 limited liability company licensed in, conducting business in, and residing in Washington  
 6 State. Balaton is identified in the Declaration as the "Declarant" of the Project. The  
 7 Association is informed and believes, and on that basis alleges, that Balaton purported to  
 8 have an ownership interest in the Project, sold Project units, and purported to have and/or  
 9 have had an ownership interest in the proceeds from Project unit sales. Balaton acted in  
 10 concert with and was controlled by the other "Defendants Equity" (as defined in paragraph  
 11 21 below) in converting the Project from an apartment to a condominium, in the marketing  
 12 and selling of units therein, and in operating and controlling the Association during the  
 13 period of declarant control.

14       4.       EQUITY RESIDENTIAL PROPERTIES MANAGEMENT CORP.  
 15 ("Equity") is a Delaware corporation licensed in, conducting business in, and residing in  
 16 Washington State. Equity is and/or was at all relevant times a managing member and the  
 17 authorized agent of Balaton, and is and/or was at all relevant times wholly owned by ERP.  
 18 The Association is informed and believes, and on that basis alleges, that Equity had an  
 19 ownership interest in the Project and/or had/has an ownership interest in the proceeds from  
 20 unit sales. The Association is further informed and believes, and on that basis alleges that  
 21 Equity acted in concert with and controlled the actions of Balaton and other related entities in  
 22 converting the Project from an apartment to a condominium, in the marketing and selling of  
 23 units therein, and in operating and controlling the Association during the period of declarant

24 COMPLAINT - 3

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1 control.

2 5. ERP OPERATING LIMITED PARTNERSHIP ("ERP") is an Illinois limited  
3 partnership licensed in, conducting business in, and residing in Washington State. The  
4 Association is informed and believes, and on that basis alleges, that ERP had an ownership  
5 interest in the Project and/or had/has an ownership interest in the proceeds from unit sales.  
6 The Association is further informed and believes, and on that basis alleges that ERP acted in  
7 concert with and controlled the actions of Balaton and other related entities in converting the  
8 Project from an apartment to a condominium, in the marketing and selling of units therein,  
9 and in operating and controlling the Association during the period of declarant control.

10 6. EQUITY RESIDENTIAL is a Maryland real estate investment trust  
11 conducting business in and residing in Washington State. Equity Residential is and/or was at  
12 all relevant times the general partner of ERP and the authorized agent of the other  
13 Defendants Equity. The Association is informed and believes, and on that basis alleges, that  
14 Equity Residential had an ownership interest in the Project and/or had/has an ownership  
15 interest in the proceeds from unit sales. The Association is further informed and believes,  
16 and on that basis alleges that Equity Residential acted in concert with and controlled the  
17 actions of Balaton and other related entities in converting the Project from an apartment to a  
18 condominium, in the marketing and selling of units therein, and in operating and controlling  
19 the Association during the period of declarant control. According to its own website, Equity  
20 Residential, and its "affiliates, subsidiaries and related entities," "operates businesses and  
21 Web sites under the names, among others, **Equity Residential** (equityresidential.com), **ERP**  
22 **Operating Limited Partnership**, **Equity Residential Properties Management Corp.**  
23 (equityapartments.com) and **Equity Corporate Housing, Inc.** (equitycorporatehousing.com)

24 COMPLAINT - 4

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1 Equity Condominiums (equitycondos.com), and Fort Lewis Communities  
 2 (ftlewiscommunities.com),”... and is the “parent company” of those entities.

3 7. DAVID ATTLESON (“Attleson”) is an individual residing in Washington  
 4 State. Attleson is and/or was at all relevant times a member and/or manager and an  
 5 authorized agent of Balaton and was a director and officer of the Association’s Board of  
 6 Directors. The Association is informed and believes, and on that basis alleges, that Attleson  
 7 is and/or was at all relevant times an owner, shareholder, director, officer, partner, trustee,  
 8 principal, agent, and/or employee of Equity, ERP and/or Equity Residential. The Association  
 9 is further informed and believes, and on that basis alleges, that Attleson has and/or had at all  
 10 relevant times an ownership interest in the proceeds from Project unit sales and served as the  
 11 primary/lead “Defendants Equity” principal “Construction Manager” and/or “Conversion  
 12 Manager” and/or “Project Manger” and/or “Property Manager” for the Project. JANE DOE  
 13 ATTLESON is an individual believed to be the spouse of Attleson. The Association is  
 14 informed and believes, and on that basis alleges, that the acts and failures to act of Attleson  
 15 in connection with the Project and as specifically alleged herein were committed in  
 16 furtherance of and/or with the intent to benefit his marital community, its property, or its  
 17 business.

18 8. SUSAN WIEMER (“Wiemer”) is an individual believed to be residing in  
 19 Illinois. Wiemer is and/or was at all relevant times a member and/or manager of Balaton and  
 20 was a director and officer of the Association’s Board of Directors. The Association is  
 21 informed and believes, and on that basis alleges, that Wiemer is and/or was at all relevant  
 22 times an owner, shareholder, director, officer, partner, trustee, principal, agent, and/or  
 23 employee of Equity, ERP and/or Equity Residential. The Association is further informed and

24 COMPLAINT - 5

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1 believes, and on that basis alleges, that Wiemer has and/or had at all relevant times an  
2 ownership interest in the proceeds from Project unit sales. JOHN DOE WIEMER is an  
3 individual believed to be the spouse of Wiemer. The Association is informed and believes,  
4 and on that basis alleges, that the acts and failures to act of Wiemer in connection with the  
5 Project and as specifically alleged herein were committed in furtherance of and/or with the  
6 intent to benefit her marital community, its property, or its business.

7 9. AMY HIMMERICH ("Himmerich") is an individual believed to be residing  
8 in Washington State. Himmerich was a director and officer of the Association's Board of  
9 Directors. The Association is informed and believes, and on that basis alleges, that  
10 Himmerich is and/or was at all relevant times a member and/or manager of Balaton and/or  
11 was an owner, shareholder, director, officer, partner, trustee, principal, agent, and/or  
12 employee of Equity, ERP and/or Equity Residential. The Association is informed and  
13 believes, and on that basis alleges, that Himmerich has and/or had at all relevant times an  
14 ownership interest in the proceeds from Project unit sales. JOHN DOE HIMMERICH is an  
15 individual believed to be the spouse of Himmerich. The Association is informed and  
16 believes, and on that basis alleges, that the acts and failures to act of Himmerich in  
17 connection with the Project and as specifically alleged herein were committed in furtherance  
18 of and/or with the intent to benefit her marital community, its property, or its business.

19 10. TAMMY SCULLY ("Scully") is an individual believed to be residing in  
20 Illinois. Scully is and/or was at all relevant times a member and/or manager of Balaton. The  
21 Association is informed and believes, and on that basis alleges, that Scully is and/or was at  
22 all relevant times an owner, shareholder, director, officer, partner, trustee, principal, agent,  
23 and/or employee of Equity, ERP and/or Equity Residential. The Association is further

24 COMPLAINT - 6

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1 informed and believes, and on that basis alleges, that Scully has and/or had at all relevant  
2 times an ownership interest in the proceeds from Project unit sales. JOHN DOE SCULLY is  
3 an individual believed to be the spouse of Scully. The Association is informed and believes,  
4 and on that basis alleges, that the acts and failures to act of Scully in connection with the  
5 Project and as specifically alleged herein were committed in furtherance of and/or with the  
6 intent to benefit her marital community, its property, or its business.

7 11. MARK GOLDSTEIN ("Goldstein") is an individual believed to be residing in  
8 Illinois. Goldstein is and/or was at all relevant times a member and/or manager and an  
9 authorized agent of Balaton. The Association is informed and believes, and on that basis  
10 alleges, that Goldstein is and/or was at all relevant times an owner, shareholder, director,  
11 officer, partner, trustee principal, agent, and/or employee of Equity, ERP and/or Equity  
12 Residential. The Association is further informed and believes, and on that basis alleges, that  
13 Goldstein has and/or has at all relevant times an ownership interest in the proceeds from  
14 Project unit sales. JANE DOE GOLDSTEIN is an individual believed to be the spouse of  
15 Goldstein. The Association is informed and believes, and on that basis alleges, that the acts  
16 and failures to act of Goldstein in connection with the Project and as specifically alleged  
17 herein were committed in furtherance of and/or with the intent to benefit his marital  
18 community, its property, or its business.

19 12. MICHAEL MCHUGH ("McHugh") is an individual believed to be residing in  
20 Illinois. McHugh is and/or was at all relevant times a member and/or manager of Balaton.  
21 The Association is informed and believes, and on that basis alleges, that McHugh is and/or  
22 was at all relevant times an owner, shareholder, director, officer, partner, trustee, principal,  
23 agent, and/or employee of Equity, ERP and/or Equity Residential. The Association is further

24 COMPLAINT - 7

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1 informed and believes, and on that basis alleges, that McHugh has and/or had at all relevant  
2 times an ownership interest in the proceeds from Project unit sales. JANE DOE MCHUGH is  
3 an individual believed to be the spouse of McHugh. The Association is informed and  
4 believes, and on that basis alleges, that the acts and failures to act of McHugh in connection  
5 with the Project and as specifically alleged herein were committed in furtherance of and/or  
6 with the intent to benefit his marital community, its property, or its business.

7 13. NATALIA PICOULAS ("Picoulas") is an individual believed to be residing  
8 in Illinois. Picoulas is and/or was at all relevant times a member and/or manager of Balaton.  
9 The Association is informed and believes, and on that basis alleges, that Picoulas is and/or  
10 was at all relevant times an owner, shareholder, director, officer, partner, trustee, principal,  
11 agent, and/or employee of Equity, ERP and/or Equity Residential. The Association is further  
12 informed and believes, and on that basis alleges, that Picoulas has and/or had at all relevant  
13 times an ownership interest in the proceeds from Project unit sales. JOHN DOE PICOULAS  
14 is an individual believed to be the spouse of Picoulas. The Association is informed and  
15 believes, and on that basis alleges, that the acts and failures to act of Picoulas in connection  
16 with the Project and as specifically alleged herein were committed in furtherance of and/or  
17 with the intent to benefit her marital community, its property, or its business.

18 14. JOHN DRYK ("Dryk") is an individual believed to be residing in Illinois.  
19 Dryk is and/or was at all relevant times a member and/or manager of Balaton. The  
20 Association is informed and believes, and on that basis alleges, that Dryk is and/or was at all  
21 relevant times an owner, shareholder, director, officer, partner, trustee, principal, agent,  
22 and/or employee of Equity, ERP and/or Equity Residential. The Association is further  
23 informed and believes, and on that basis alleges, that Dryk has and/or had at all relevant

1 times an ownership interest in the proceeds from Project unit sales. JANE DOE DRYK is an  
2 individual believed to be the spouse of Dryk. The Association is informed and believes, and  
3 on that basis alleges, that the acts and failures to act of Dryk in connection with the Project  
4 and as specifically alleged herein were committed in furtherance of and/or with the intent to  
5 benefit his marital community, its property, or its business.

6 15. MARK PARRELL ("Parrell") is an individual believed to be residing in  
7 Illinois. Parrell is and/or was at all relevant times a member and/or manager of Balaton. The  
8 Association is informed and believes, and on that basis alleges, that Parrell is and/or was at  
9 all relevant times an owner, shareholder, director, officer, partner, trustee, principal, agent,  
10 and/or employee of Equity, ERP and/or Equity Residential. The Association is further  
11 informed and believes, and on that basis alleges, that Parrell has and/or had at all relevant  
12 times an ownership interest in the proceeds from Project unit sales. JANE DOE PARRELL is  
13 an individual believed to be the spouse of Parrell. The Association is informed and believes,  
14 and on that basis alleges, that the acts and failures to act of Parrell in connection with the  
15 Project and as specifically alleged herein were committed in furtherance of and/or with the  
16 intent to benefit his marital community, its property, or its business.

17 16. ROBERT TANAKA ("Tanaka") is an individual believed to be residing in  
18 Illinois. Tanaka is and/or was at all relevant times a member and/or manager of Balaton. The  
19 Association is informed and believes, and on that basis alleges, that Tanaka is and/or was at  
20 all relevant times an owner, shareholder, director, officer, partner, trustee, principal, agent,  
21 and/or employee of Equity, ERP and/or Equity Residential. The Association is further  
22 informed and believes, and on that basis alleges, that Tanaka has and/or had at all relevant  
23 times an ownership interest in the proceeds from Project unit sales. JANE DOE TANAKA is

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1 an individual believed to be the spouse of Tanaka. The Association is informed and believes,  
2 and on that basis alleges, that the acts and failures to act of Tanaka in connection with the  
3 Project and as specifically alleged herein were committed in furtherance of and/or with the  
4 intent to benefit his marital community, its property, or its business.

5 17. BARBARA SHUMAN ("Shuman") is an individual believed to be residing in  
6 Illinois. Shuman is and/or was at all relevant times a member and/or manager of Balaton. The  
7 Association is informed and believes, and on that basis alleges, that Shuman is and/or was at  
8 all relevant times an owner, shareholder, director, officer, partner, trustee, principal, agent,  
9 and/or employee of Equity, ERP and/or Equity Residential. The Association is further  
10 informed and believes, and on that basis alleges, that Shuman has and/or had at all relevant  
11 times an ownership interest in the proceeds from Project unit sales. JOHN DOE SHUMAN is  
12 an individual believed to be the spouse of Shuman. The Association is informed and believes,  
13 and on that basis alleges, that the acts and failures to act of Shuman in connection with the  
14 Project and as specifically alleged herein were committed in furtherance of and/or with the  
15 intent to benefit her marital community, its property, or its business.

16 18. DOES 1-50 are believed to be business entities related to and/or affiliates of  
17 Balaton, Equity, ERP and/or Equity Residential and/or owners, shareholders, members,  
18 managers, directors, officers, partners, trustees, principals, agents, and/or employees of the  
19 same, that had an ownership interest in the Project and/or were involved in converting  
20 Balaton from an apartment to a condominium, and/or in the marketing and selling of Project  
21 units, and/or in controlling the Association and managing and maintaining the Project, and/or  
22 were otherwise involved in the Project before, during and/or after conversion and/or had an  
23 ownership interest in the proceeds from Project unit sales.

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1           19.     The Association is informed and believes, and on that basis alleges, that at all  
 2 relevant times, Balaton, Equity, ERP and Equity Residential were "affiliates" of one another  
 3 as defined in RCW 64.34.020(1), and that they acted in concert in executing the Declaration  
 4 and that they reserved, succeeded to, possessed and/or exercised "special declarant rights" as  
 5 defined in RCW 64.34.020(29) and/or the Declaration, and/or owned a fee interest in the real  
 6 property that was subjected to the Declaration at the time of the recording of an instrument  
 7 pursuant to RCW 64.34.316, and were directly, or through one or more affiliates, materially  
 8 involved in the construction, marketing, or sale of units in the Condominium created by the  
 9 recording of the instrument, making them "declarants" of the Project under RCW  
 10 64.34.020(13); *One Pac. Towers Homeowners' Ass'n v. HAL Real Estate Inv., Inc.*, 148  
 11 Wn.2d 319, 61 P.2d 1094, (2002); and/or the definition of declarant in the Declaration. The  
 12 Association is further informed and believes, and on that basis alleges, that Balaton, Equity,  
 13 ERP and Equity Residential were also "dealers" as defined in RCW 64.34.020(12).

14           20.     Defendant Balaton has been purported to be the named "Declarant" of the  
 15 Project and the seller of Project units. The claims being made herein against the remaining  
 16 Defendants Equity, including Equity, ERP and Equity Residential, and the to-be-named Doe  
 17 Defendants to the extent appropriate, for declarant and seller liability are being made against  
 18 them only to the extent they are determined to be "co-declarants" of the Project and/or "alter  
 19 egos" of Defendant Balaton under applicable law. Additionally, the claims for "declarant -  
 20 construction professional liability" made herein are only being made against Defendants  
 21 Balaton, Equity, ERP and Equity Residential and are not presently being made against any of  
 22 the other Defendants. However, to the extent other named and/or Doe Defendant entities or  
 23

1 individuals are established as being co-declarants and/or alter egos of a declarant Defendant  
2 entity, the claims made herein for declarant liability apply equally to them.

3 21. Balaton, Equity, ERP and Equity Residential are referred to collectively  
4 herein as "Defendants Equity". The claims and allegations made herein against Defendants  
5 Equity and their owners, shareholders, members, managers, directors, officers, partners,  
6 trustees, principals, agents, and/or employees are also being made against Does 1-50, to the  
7 extent they apply.

8 22. Attleson, Wiemer, Scully, Goldstein, McHugh, Picoulas, Dryk, Parrell,  
9 Tanaka and Shuman are referred to collectively herein as the "Balaton Individuals".

10 23. The Association served Defendants Equity, by and through their authorized  
11 agents, with its pre-litigation RCW 64.50.020 Notice of Claim letter on or before July 27,  
12 2005. On or about August 18, 2005 the Association, by and through its counsel, received a  
13 response from Defendants Equity's authorized agent Defendant Goldstein proposing on  
14 Defendants Equity's behalf to inspect the Project, to complete the proposed inspection by  
15 October 15, 2005, and based on that proposed inspection, to either offer to remedy the  
16 defects, compromise by payment, or dispute the claim. On or about August 25, 2005, the  
17 Association served Defendants Equity, by and through their authorized agents, with a pre-  
18 litigation RCW 64.50.020(8) Amended Notice of Claim letter, to which a RCW 64.50.020  
19 response was never received by the Association.

## 20 II. JURISDICTION AND VENUE

21 24. The Association incorporates herein by reference Paragraphs 1-23 of this  
22 Complaint.

23 25. This Court has jurisdiction over this matter because the defective work, unit

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1 marketing and sales, business, real estate/property management, declarant control, property  
 2 damage, and/or other tortious and/or non-tortious acts and/or failures to act of and/or caused  
 3 by the Defendants and giving rise to their liability in this matter occurred, and the relevant  
 4 contracts were entered into and performed in Washington State. Additionally, one or more of  
 5 the Defendants have their principal place of business in, reside in, and/or are domiciled in  
 6 Washington State.

7 26. Venue is proper because the Project is located in Lake Forest Park, King  
 8 County, and the defective work, unit marketing and sales, business, real estate/property  
 9 management, declarant control, property damage, and/or other tortious and/or non-tortious  
 10 acts and/or failures to act of and/or caused by the Defendants and giving rise to their liability  
 11 in this matter occurred, and the relevant contracts were entered into and performed in King  
 12 County. Additionally, one or more of the Defendants do business in, reside in, and/or are  
 13 domiciled in King County.

### 14 III. CLAIMS

#### 15 A. First Claim – Against Defendants Equity for Breach of Express and Implied 16 Warranty under the Washington Condominium Act

17 27. The Association incorporates herein by reference Paragraphs 1-26 of this  
 18 Complaint.

19 28. The express and implied warranties described below in Paragraphs 29 through  
 20 31 “run with the land,” extend to original and subsequent unit purchasers, and were made for  
 21 both their benefit and for the benefit of the Association.

22 29. Pursuant to RCW 64.34.443 of the Washington Condominium Act (“WCA”),  
 23 “[a]ny written affirmation of fact or promise which relates to the unit, its use, or rights  
 24 appurtenant thereto, area improvements to the condominium that would directly benefit the

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1 unit, or the right to use or have the benefit of facilities not located in the condominium  
 2 creates an express warranty that the unit and related rights and uses will conform to the  
 3 affirmation or promise; [a]ny model or written description of the physical characteristics of  
 4 the condominium at the time the purchase agreement is executed, *including plans and*  
 5 *specifications of or for improvements*, creates an express warranty that the condominium  
 6 will conform to the model or description; and [a]ny written description of the quantity or  
 7 extent of the real property comprising the condominium, including plats or surveys, creates  
 8 an express warranty that the condominium will conform to the description...”

9       30. In many respects, the “as-built” construction of the Project, including but not  
 10 limited to the construction of the weather-proofing and structural systems, both original and  
 11 the construction that was done as part of the conversion process, does not conform to the  
 12 approved plans and specifications for the Project and is in violation of the applicable building  
 13 codes. Additionally, the Project’s Public Offering Statement (“POS”) contains numerous  
 14 other written affirmations of fact and/or promises made by or on behalf of Defendants Equity  
 15 regarding the quality of the construction and the condition of the Project which were false,  
 16 including but not limited to: a) that there were no known physical hazards at the Project; b)  
 17 that all structural components and mechanical systems of all buildings are substantially  
 18 completed; c) that the buildings are as originally designed; d) that the Project is in good  
 19 condition and well maintained; and e) that the workmanship is good and the materials used  
 20 were appropriate. Further, Defendants Equity included in the POS the first (and warranted)  
 21 budget for the Association, which they created and which grossly understated the amount of  
 22 money necessary to repair and maintain the Project and operate the Association. Because the  
 23 aforementioned written representations constitute express warranties under the WCA and

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1 were false when made, Defendants Equity are liable to the Association and its unit owner  
2 members for breach of express warranty under the WCA.

3 31. Pursuant to RCW 64.34.445 of the WCA, Defendants Equity impliedly  
4 warranted that the units, limited common elements and common elements of the Project were  
5 suitable for the ordinary uses of real estate of its type, and that any improvements made or  
6 contracted for by them were free from defective materials and were constructed in  
7 accordance with sound engineering and construction standards, in a workmanlike manner,  
8 and in compliance with all laws applicable to such improvements.

9 32. Defendants Equity breached their implied warranties to the Association and its  
10 unit owner members in that there are serious and systemic violations of applicable building  
11 codes and other serious systemic defects in the materials, design, installation and/or  
12 construction of the Project's building envelope and underlying weather resistive  
13 barrier/weather-proofing systems, roofs, decks, below-grade waterproofing system, vent  
14 system, structural system, site grading and drainage, electrical, fire and life safety systems  
15 and other defects that have caused and continue to cause substantial water and moisture  
16 intrusion and resultant property damage, including mold growth, to exterior and interior  
17 building components. Additionally, some of the defects at issue have created conditions that  
18 constitute fire/life safety/health hazards and structural instability hazards. The  
19 aforementioned defects, resultant water and moisture intrusion, mold growth and other  
20 property damage to building components and the other resultant hazardous conditions that  
21 exist at the Project have rendered it unsuitable for the ordinary use of real estate of its type.

22 33. As a direct and proximate result of the breaches of express and implied  
23 warranties and consequential property damage described above, the Association and its unit

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owner members have been damaged in an amount to be proved at trial. Such damages include, among other things, the cost of repairing the defects and damage, including the necessary investigative costs and repair scope and cost of repair estimate development costs, and the loss of use suffered by unit owners as a result of the defects and damage and their repair, relocation expenses and diminution in market value of the units and Project as whole. Additionally, pursuant to RCW 64.34.455, the Association is entitled to its reasonable attorneys' fees incurred in investigating and prosecuting this action.

**B. Second Claim – Against Defendants Equity for Breach of Purchase and Sale Agreement Contracts**

34. The Association incorporates herein by reference Paragraphs 1-33 of this Complaint.

35. Defendants Equity sold the units, limited common elements and common elements of the Project through purchase and sale agreement contracts with unit purchasers. The purchase and sale agreement contracts used by Defendants Equity for unit sales were unconscionable within the meaning of RCW 64.34.080 at the time they were entered into. Notwithstanding their unconscionability, a fundamental term of the purchase and sale agreements was that the entire Project was constructed in accordance with its approved plans and specifications, applicable building codes and industry standards, that it was otherwise free from defects and physical hazards, and that it was habitable.

36. Defendants Equity owed the aforementioned contractual obligations, and the duty of good faith in the performance and enforcement of the contracts pursuant to RCW 64.34.090, to each and every Project unit purchaser. Defendants Equity breached those duties by selling Project units, limited common elements and common elements that were defectively constructed in deviation from the Project's approved plans and specifications and

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1 in violation of the applicable building codes and industry standards, were otherwise  
 2 defective, constitute physical hazards, and are not habitable.

3 37. As a direct and proximate result of the breaches of contract described above,  
 4 unit owners and the Association have been damaged in an amount to be proved at trial. Such  
 5 damages include, among other things, the cost of repairing the defects and damage, including  
 6 the necessary investigative costs and repair scope and cost of repair estimate development  
 7 costs, and the loss of use suffered by unit owners as a result of the defects and damage and  
 8 their repair, relocation expenses, consequential damages, diminution in market value of the  
 9 units and Project as whole, and all other damages that flow naturally from the breaches.  
 10 Additionally, pursuant to paragraph q of the purchase and sale agreements used for unit sales,  
 11 the Association is entitled to its reasonable attorneys' fees and expenses incurred in  
 12 investigating and prosecuting this action.

13 **C. Third Claim -- Against Defendants Equity for Breach of**  
 14 **Property/Real Estate Management Contract**

15 38. The Association incorporates herein by reference Paragraphs 1-37 of this  
 16 Complaint.

17 39. For a period of time after the Condominium was created and the Association  
 18 was formed, Defendants Equity, pursuant to a written contract and/or an oral contract and/or  
 19 a contract established by conduct, were responsible for the management, control, supervision  
 20 and maintenance of the Project. Defendants Equity owed the aforementioned contractual  
 21 duty to the Association and each and every Association member. Defendants Equity  
 22 breached that contractual duty by, including but not limited to, failing to disclose and/or  
 23 making misrepresentations to the Association and its unit owner members regarding: a) the  
 24 conflicts of interest Defendants Equity had in being both the declarants/sellers of the Project  
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1 and the Project's property manager; b) the existence of serious and wide spread building code  
 2 violations and other defective construction, resultant property damage and physical hazards  
 3 at the Project; c) the financial interest Defendants Equity had in not making the necessary  
 4 defect and damage repairs at the Project and in concealing the defects and damage from the  
 5 Association and unit owners in an effort to save money and avoid warranty claims; d) the  
 6 inadequacy of the Association budget created by Defendants Equity and included in the  
 7 Project's Public Offering Statement; e) that Defendants Equity were distributing assets from  
 8 named declarant Balaton Condominium, LLC and possibly other Equity Defendants to others  
 9 without leaving any assets in reserve to satisfy warranty claims made by the Association or  
 10 unit owners, to their detriment; f) the legal rights of the Association and its members  
 11 regarding defective construction and the control, management, maintenance and repair  
 12 responsibilities of the Declarants and the Association; and g) by failing to properly inspect,  
 13 maintain and repair the Project. Because of the aforementioned breaches of contractual duty,  
 14 property damage has occurred at the Project, is currently occurring, and will continue to  
 15 occur.

16 40. As a direct and proximate result of the breaches of contract/duty and  
 17 consequential property damage described above, the Association and its unit owner members  
 18 have been damaged in an amount to be proved at trial. Such damages include, among other  
 19 things, the cost of repairing the defects and damage, including the necessary investigative  
 20 costs and repair scope and cost of repair estimate development costs, and the loss of use  
 21 suffered by unit owners as a result of the defects and damage and their repair, relocation  
 22 expenses, diminution in market value of the units and Project as whole, consequential  
 23 damages, and all other damages that flow naturally from the breaches.

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**D. Fourth Claim – Against Defendants Equity for  
Negligent Property/Real Estate Management**

41. The Association incorporates herein by reference Paragraphs 1-40 of this Complaint.

42. For a period of time after the Condominium was created and the Association was formed, Defendants Equity assumed and performed property/real estate management duties for the Association and its unit owner members, and in that capacity, was responsible for the management, control, supervision and maintenance of the Project. Defendants Equity breached those duties by, including but not limited to, failing to disclose and/or making misrepresentations to the Association and its unit owner members regarding: a) the conflicts of interest Defendants Equity had in being both the declarants/sellers of the Project and the Project's property manager; b) the existence of serious and wide spread building code violations and other defective construction, resultant property damage and physical hazards at the Project; c) the financial interest Defendants Equity had in not making the necessary defect and damage repairs at the Project and in concealing the defects and damage from the Association and unit owners in an effort to save money and avoid warranty claims; d) the inadequacy of the Association budget created by Defendants Equity and included in the Project's Public Offering Statement; e) that Defendants Equity were distributing assets from named declarant Balaton Condominium, LLC and possibly other Equity Defendants to others without leaving any assets in reserve to satisfy warranty claims made by the Association or unit owners, to their detriment; f) the legal rights of the Association and its members regarding defective construction and the control, management, maintenance and repair responsibilities of the Declarants and the Association; and g) by failing to properly inspect,

1 maintain and repair the Project. Because of the aforementioned breaches of duty, property  
2 damage has occurred at the Project, is currently occurring, and will continue to occur.

3 43. As a direct and proximate result of the breaches of duty and consequential  
4 property damage described above, the Association and its unit owner members have been  
5 damaged in an amount to be proved at trial. Such damages include, among other things, the  
6 cost of repairing the defects and damage, including the necessary investigative costs and  
7 repair scope and cost of repair estimate development costs, and the loss of use suffered by  
8 unit owners as a result of the defects and damage and their repair, relocation expenses,  
9 diminution in market value of the units and Project as whole, consequential damages, and  
10 any and all other foreseeable damages.

11 **E. Fifth Claim – Against Defendants Equity and Defendants Attleson, Wiemer**  
12 **and Himmerich for Breach of Fiduciary Duty**

13 44. The Association incorporates herein by reference Paragraphs 1-43 of this  
14 Complaint.

15 45. Pursuant to the WCA and the Declaration, the Association is responsible for  
16 repairing, maintaining and replacing the Common Elements, Limited Common Elements and  
17 other unit owner property located in and on the Project, and for repairing, replacing and  
18 restoring damage to the Project. The Project is not currently and never has been owned,  
19 rented or occupied by the Association, but rather is and has always been owned and occupied  
20 by the unit owners. Attached hereto as Exhibit 1 and incorporated into this Complaint by  
21 reference is a true and correct copy of Schedule B of the Declaration, which contains a list of  
22 the 108 condominium units at the Project and the percentages of Project ownership held by  
23 each of the individual owners of the listed units, which total one hundred (100) percent  
24 ownership of the Project.

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46. For a period of time, Defendants Equity and Defendants Attleson, Wiemer and Himmerich controlled the Association's Board of Directors, and therefore, under RCW 64.34.308 and the Declaration, owed a fiduciary duty of care to the Association and its unit owner members and were required to at all times act on behalf of the Association. Defendants Equity and Defendants Attleson, Wiemer and Himmerich breached that fiduciary duty by, including but not limited to: a) failing to disclose to the Association and unit owners the existence of construction defects and resultant property damage at the Project that they knew or should have known about; b) failing to disclose to the Association and unit owners the financial interest Defendants Equity had in not making the necessary defect and damage repairs at the Project and instead in concealing the defects and damage from the Association and unit owners in an effort to save money and avoid warranty claims; c) failing to disclose to the Association and unit owners the conflicts of interest Defendants Equity had in being both the declarants/sellers of the Project and in controlling the Association; d) including provisions in the Declaration that impose limitations on the power of the Association to deal with the declarant(s) which are more restrictive than the limitations imposed on the power of the Association to deal with other persons; e) failing to conduct reasonable inspections of the Project; f) failing to identify and maintain, repair and/or replace construction defects and property damage at the Project that they knew or should have known about; g) failing to provide adequate reserves in the Association's budget for the repair of construction defects and resultant property damage at the Project or otherwise provide funding for the same; h) failing to comply with the provisions of Article 21 of the Declaration by not making the required determinations regarding the construction defect and resultant water intrusion-caused damage to the Project, by not notifying unit owners of the damage, by not making the

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1 necessary repairs, and by other acts and/or failures to act; i) failing to disclose to the  
 2 Association and the unit owners that assets were being distributed from Balaton, and perhaps  
 3 other Equity Defendants, to other entities and/or individuals, and that as a result, Balaton was  
 4 being rendered insolvent and/or financially unable to properly respond to Association and/or  
 5 unit owner warranty claims; j) failing to disclose to the Association and the unit owners the  
 6 inadequacy of the Association budget created by Defendants Equity and included in the  
 7 Project's Public Offering Statement; k) failing to request warranty work from Defendants  
 8 Equity for the repair of defects and resultant damage at the Project that they knew or should  
 9 have known about due their conflict of interest in representing Defendants Equity interests  
 10 while at the same time controlling the Association's Board, a conflict that they resolved in  
 11 favor of Defendants Equity and against the Association; and l) otherwise failing to comply  
 12 with their duties under the WCA and Declaration.

13 47. Defendants Equity and Attleson, Wiemer and Himmerich and/or Defendants  
 14 Equity's other agents and/or employees were responsible for and caused the preparation of  
 15 the Declaration, were fully aware of its terms, including but not limited to, the terms  
 16 pertaining to their fiduciary duty as Association board members, their duty to at all times act  
 17 on behalf of the Association, and the Association's maintenance, repair and replacement  
 18 duties and obligations, and yet in breach of their fiduciary duties they intentionally and/or  
 19 unintentionally failed to comply with the very terms of the Declaration they were responsible  
 20 for creating and recording. Defendants Equity, Attleson, Wiemer and Himmerich breached  
 21 their fiduciary duties by governing, controlling and operating the Association intentionally  
 22 and/or unintentionally in such a manner that they repeatedly placed their interests over the  
 23 interests of the Association and its unit owner members (in violation of Section 14.2 of the

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1 Declaration) in order to avoid their responsibility to make defect and property damage repairs  
 2 to the Project they knew and/or should have known were necessary or to provide funding to  
 3 the Association for the repair of the same and instead passed that financial obligation on to  
 4 the unsuspecting unit owners and the Association. As a result of the actions and/or failures to  
 5 act described above, property damage to the Project has occurred, is currently occurring, and  
 6 will continue to occur. Additionally, the Association and unit owners have suffered and will  
 7 suffer additional damages that do not arise out of the aforementioned property damage to the  
 8 Project.

9 48. As a direct and proximate result of the breaches of fiduciary duty and  
 10 consequential property damage described above, the Association and its unit owner members  
 11 have been damaged in an amount to be proved at trial. Such damages include, among other  
 12 things, the cost of repairing the defects and damage, including the necessary investigative  
 13 costs and repair scope and cost of repair estimate development costs, and the loss of use  
 14 suffered by unit owners as a result of the defects and damage and their repair, relocation  
 15 expenses, diminution in market value of the units and Project as whole, consequential  
 16 damages, and any and all other foreseeable damages. Additionally, pursuant to RCW  
 17 64.34.455 and/or the Declaration, the Association is entitled to its reasonable attorneys' fees  
 18 and all other costs/expenses incurred in investigating and prosecuting this action.

19 **F. Sixth Claim – Against Defendants Equity for Liability under**  
 20 **RCW 64.34.344 and the Declaration**

21 49. The Association incorporates herein by reference Paragraphs 1-48 of this  
 22 Complaint.

23 50. Under RCW 64.34.344 and the Declaration, the Declarants are liable for their  
 24 torts in connection with any part of the Condominium which they have the responsibility to

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1 maintain, and are liable for any and all breaches of contract and other wrongful acts  
 2 committed during their control of the Association and/or ownership of units in the Project.  
 3 During the period of Declarant control of the Association and ownership of the Project or a  
 4 portion thereof, Defendants Equity had the duty and responsibility by statute and the  
 5 Declaration to repair, maintain and replace the Common Elements and Limited Common  
 6 Elements and other unit owner property located in and on the Project, and to repair, replace  
 7 and restore damage to the Project. Defendants Equity also had the duty to properly inspect  
 8 the Project and disclose to the Association and unit owners the existence of construction  
 9 defects and damage at the Project and to repair the same and/or provide funding for the same,  
 10 which they negligently and otherwise tortiously failed to do. Further, Defendants Equity  
 11 served as property/real estate managers of the Project, and in that capacity also owed the  
 12 aforementioned duties, or some of them, to the Association and the unit owners, which they  
 13 breached. As a result of the aforementioned, property damage to the Project has occurred, is  
 14 currently occurring, and will continue to occur.

15       51. As a direct and proximate result of the tortious and otherwise wrongful acts  
 16 and/or failures to act and consequential property damage described above, the Association  
 17 and its unit owner members have been damaged in an amount to be proved at trial. Such  
 18 damages include, among other things, the cost of repairing the defects and damage, including  
 19 the necessary investigative costs and repair scope and cost of repair estimate development  
 20 costs, and the loss of use suffered by unit owners as a result of the defects and damage and  
 21 their repair, relocation expenses, diminution in market value of the units and the Project as a  
 22 whole, consequential damages, any and all other foreseeable damages. Additionally, pursuant  
 23 to RCW 64.34.455 and/or the Declaration, the Association is entitled to its reasonable

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1 attorneys' fees and all other costs/expenses incurred in investigating and prosecuting this  
 2 action.

3 **G. Seventh Claim – Against Defendants Equity and the Balaton Individuals for**  
 4 **Violation of the Consumer Protection Act**

5 52. The Association incorporates herein by reference Paragraphs 1-51 of this  
 6 Complaint.

7 53. This Consumer Protection Act ("CPA") claim is being made against the  
 8 Balaton Individuals to the extent they participated in wrongful conduct by the Equity  
 9 Defendants, collectively and/or individually, that violated the CPA, or with knowledge  
 10 approved of the wrongful conduct. *State v. Ralph Williams' North West Chrysler Plymouth,*  
 11 *Inc.*, 87 Wn.2d 298, 553 P.2d 423 (1976).

12 54. RCW 19.86.020 makes it unlawful for any "person" to engage in unfair or  
 13 deceptive acts or practices in trade or commerce. Pursuant to RCW 19.86.010, "person"  
 14 includes natural persons, corporations, trusts, unincorporated associations and partnerships.  
 15 The CPA applies to prohibited conduct that take places *before, during and after sale*  
 16 *activities*, and may be violated by a failure to disclose facts material to a sales transaction, as  
 17 well as other unfair or deceptive acts or practices involving marketing and sales. A CPA  
 18 violation exists if the following occurs: (1) an unfair or deceptive act or practice, that (2)  
 19 occurred in trade or commerce, (3) impacted a public interest, (4) injured the business or  
 20 property of another, and (5) was causally related to the injury. A claimant need not show that  
 21 the act was intended to deceive, but only that the alleged act had the capacity to deceive a  
 22 substantial portion of the public.

23 55. A seller's duty to disclose material facts has been recognized in real estate  
 24 transactions, and a seller's withholding from buyers of facts material to the sale of real estate,

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1 including the existence of known construction defects or any other facts adversely affecting  
 2 the subject property, violates the CPA. *Griffith v. Centex Real Estate Corp.*, 93 Wn. App.  
 3 202, 211, 969 P.2d 486 (1998). Defendants Equity and the Balaton Individuals owed the  
 4 aforementioned duty to each and every one of the 108 unit owners at Balaton, to the  
 5 Association and to the public at large.

6         56. Defendants Equity advertise nationally on their websites  
 7 [www.equityresidential.com](http://www.equityresidential.com), [www.equitycondos.com](http://www.equitycondos.com) and others and through various other  
 8 advertising media, including *United States mail*, such things as, “[w]e are the largest publicly  
 9 traded owner, operator and developer of multifamily housing in the United States with nearly  
 10 160,000 apartments in 26 states and the District of Columbia.” They also advertise as  
 11 “Advantages to Equity Residential Condominiums: *Quality construction*, from the nation’s  
 12 leader in multifamily housing.” They further advertise having a “nationwide presence” and as  
 13 Equity Residential “success stories” “recently completed condo conversions” located in  
 14 Arizona, Florida and Washington. The Washington State projects advertised include the  
 15 “recently completed condo conversions” Equity “success stories” **Balaton**, Lake Forest Park,  
 16 Washington, Sterling Heights, Bellevue, Washington, and Pointe East Condominium Homes,  
 17 Redmond, Washington. Recently completed Timber Ridge Condominium in Woodinville,  
 18 Washington is another local apartment to condominium conversion project by Defendants  
 19 Equity. The Association believes there are additional Equity condominium conversion  
 20 projects in Washington State that are presently unknown to the Association and that will be  
 21 identified during the discovery process.

22         57. The Association is informed and believes, and on that basis alleges, that  
 23 Defendants Equity and the Balaton Individuals knowingly conspired to and did devise and

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1 implement a nationwide business plan/pattern of conduct involving apartment to  
2 condominium conversion projects to obtain money by means of false, fraudulent, unfair and  
3 deceptive pretenses, representations, promises, and failures to disclose. That unlawful  
4 plan/pattern of conduct was based on converting knowingly defect and damage ridden  
5 apartments Defendants Equity owned and operated into condominiums for sale, and to  
6 maximize Defendants Equity, the Balaton Individuals and perhaps other related entities  
7 and/or individuals' financial gain by: 1) either not repairing known construction defects and  
8 resultant water intrusion-caused physical damage in the projects they converted and sold and  
9 in the projects they are currently in the process of converting and/or selling or by performing  
10 grossly inadequate "band-aid" repairs of some of the defective conditions or otherwise  
11 concealing the conditions as part of "the cover up and sell" scheme; 2) failing to disclose to  
12 and actively deceiving the inspectors hired by the Equity Defendants to conduct the  
13 inspections statutorily required for condominium conversion projects and the real estate  
14 agents hired to market and sell the units the true quality and condition of the construction and  
15 the habitability of the projects; and 3) including in the conversion projects' public offering  
16 statements "rubber stamped" reports made on Defendants Equity's behalf that fail to disclose  
17 known construction defects and resultant property damage at the projects converted and that  
18 misstate with the intent to deceive potential unit purchasers the true condition of the projects.  
19 Defendants Equity and the Balaton Individuals' implementation of the aforementioned  
20 unlawful plan/pattern of conduct for their apartment to condominium conversion projects for  
21 purposes of financial gain has included and currently still does include pre, during and post  
22 unit sale activity and is repeated over and over again nationwide in the conversion projects  
23 they undertake. The Balaton conversion project forms just one part of this larger unlawful

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1 business scheme conceived, conspired and implemented by Defendants Equity and their  
 2 owners, directors, officers, principals, managers and employees to unfairly and deceptively  
 3 profit nationwide from unsuspecting purchasers of seriously defective and damaged  
 4 condominium units.

5 58. Specifically with respect to the Balaton Project, Defendants Equity, by and  
 6 through the Balaton Individuals, operated the Project as an apartment for years before they  
 7 converted it to a condominium, and during that time and subsequently, were aware of  
 8 serious, wide-spread construction defects and resultant water intrusion-caused mold growth  
 9 and other property damage at the Project. In part, the Defendants were aware of the serious  
 10 defect related problems at the Project because of the numerous written and oral complaints  
 11 they received from apartment renters regarding the same during the time they managed the  
 12 Project as an apartment before it was converted to a condominium, including but not limited  
 13 to, complaints regarding leaking windows, roof leaks, excessive moisture build up and mold  
 14 growth in units, site drainage issues, leaking and deteriorating decks and venting problems.  
 15 Documents containing such complaints and identified as "Equity Residential Properties  
 16 Service Requests" were obtained from files informally produced to the Association by the  
 17 Equity Defendants. Additionally, documents appearing to be work orders, billing invoices,  
 18 and budgets for defect-related "cheap fix" repair work performed at the Project while  
 19 condominium units were being marketed and sold were also produced by Defendants Equity.  
 20 Below is a summary of some excerpts taken from the aforementioned documents produced  
 21 by Defendants Equity:

22 a. Equity Service Request #487171 – "Deck above leaks water when raining."

23 b. Equity Service Request #321030 – "water coming in windows."

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- 1 c. Equity Service Request #2368819 – “mold on bed windows...”
- 2 d. Equity Service Request #2368831 – “Residents concerned w/moisture &
- 3 mold on windows – pls check seals and have mold cleaned...Cleaned mould
- 4 and caulked windows.”
- 5 e. Equity Service Request #2368884 – “During rain storm water was leaking
- 6 from above into L/R window (by porch).”
- 7 f. Equity Service Request #6200644 – “Caulked the exterior window frame.”
- 8 g. Equity Service Request #2368797 – “Water coming in sliding glass door
- 9 between frame & sheet rock.”
- 10 h. Equity Service Request #6653646 – “Windows – mildew around
- 11 casings...Door – mold/mildew around interior frame.”
- 12 i. Equity Service Request #1286284 – “Master bedroom – mold on
- 13 wall...Major undertaking...possible footing drains...inspected unit – mold
- 14 throughout unit in various stages...”
- 15 j. Equity Service Request #2368811 – “Mold in bedroom on right side –
- 16 under window and along wall right to bed.”
- 17 k. Equity Service Request #2368964 – “mold along walls in bedrooms and
- 18 closets...painted mould areas.”
- 19 l. Equity Service Request #2991310 – “Kilz mold & repaint.”
- 20 m. Equity Service Request #1060118 – “slow leak in hall bathroom from the
- 21 roof...water is condensation...duct taped duct work to stop leaking.”
- 22 n. Equity Service Request #2991496 – “Roof is leaking in kitchen in front of
- 23 fridge – ceiling damage.”

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- 1 o. Equity Service Request #5263569 – “Leak from ceiling during rain.”
- 2 p. Equity Service Request #6737768 – “Leakage from roof from storm.”
- 3 q. High Country Contractors, Inc. Field Order Invoice #00-1-1115 – “Fixed
- 4 handrail that had rotted away and Painted it.”
- 5 r. High Country Contractors, Inc. field order invoice #00-1-1347 – “Remove
- 6 existing handrail, replace and paint.”
- 7 s. Equity Preliminary Capital Budget for Cherry Hill [Apartments] - \$15,000
- 8 for soffit replacement and repair; \$79,000 for deck replacement and repair;
- 9 \$35,000 for replacement and repair of “distorted and damaged vinyl siding
- 10 throughout”; \$128,000 for roofing replacement and repair; \$2,500 for site
- 11 drainage repairs;
- 12 t. High County Contractor’s Inc. Field Order #6-324-21304 ; “Subject: Dry
- 13 Rot Repair...Complete removal of rot organism, treat remaining wood with
- 14 copper preserve. Replace/reinforce floor joists, plywood subfloor, sill plates
- 15 and studs. Replace drywall, texture and gypcrete. Paint...”

16 59. Moreover, the Equity Defendants and the Balaton Individuals performed

17 defect, resultant damage and/or other repair work at the Project before, during and after the

18 conversion process was completed in locations where obviously defective construction

19 conditions and resultant water intrusion-caused property damage, including substantial

20 visible mold growth, existed. For example, during the conversion process a construction

21 crane fell through the roof of one of the buildings at the Project. As part of repairing the roof

22 damage caused by the crane, the Equity Defendants repaired damaged sheathing located in

23 the attic below. Directly adjacent to the new sheathing installed to repair the damage was old

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1 sheathing covered in mold that had been caused by warm moist air being pumped into the  
2 attic space by a defective venting system (which had been haphazardly "repaired" by the  
3 Defendants Equity in violation of applicable codes.) Additionally, Defendants Equity,  
4 knowing that the decks at the Project were defectively constructed and were seriously  
5 deteriorated due to the water intrusion that had occurred and was occurring as a result,  
6 replaced and/or rebuilt some of the decks and left the rest alone, but for some short term  
7 "fixes". Moreover, approximately 80% of the windows at Balaton were caulked, many  
8 repeatedly, by Defendants Equity in a effort to avoid making costly necessary and proper  
9 repairs of major problems and to instead perform "cheap fixes" and conceal major hidden  
10 problems. Defendants Equity also performed other haphazard cheap fixes to siding, building  
11 paper, sheathing, flashings, windows, vent ducting, site drains, and the interiors of units,  
12 which clearly evidence their knowledge of defective construction conditions and resultant  
13 water intrusion-caused mold growth and other property damage at those locations.

14 60. In implementing their unlawful business plan/pattern of conduct for  
15 condominium conversion projects specifically with respect to the Balaton Project,  
16 Defendants Equity and the Balaton Individuals violated the CPA as above-described and by,  
17 including but not limited to, the following: a) advertising and offering condominium units for  
18 sale to the public and failing to disclose to unit purchasers and prospective unit purchasers  
19 the existence of the known construction defects, including known deviations from the  
20 Project's approved plans and specifications and known building code violations, and known  
21 resultant property damage at the Project; b) falsely representing to unit purchasers and  
22 prospective unit purchasers that there were no known physical hazards at the Project; c)  
23 falsely representing to unit purchasers and prospective unit purchasers that all structural

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1 components and mechanical systems of all buildings were substantially completed; d) falsely  
2 representing to unit purchasers and prospective unit purchasers that the buildings are as  
3 originally designed; e) falsely representing to unit purchasers and prospective unit purchasers  
4 that the Project is in good condition and well maintained; f) falsely representing to unit  
5 purchasers and prospective unit purchasers that the workmanship is good and the materials  
6 used were appropriate; g) falsely representing to unit purchasers, potential unit purchasers  
7 and the public at large that "quality construction" is an "advantage to Equity Residential  
8 condominiums; h) failing to disclose to the Association and to unit owners the conflicts of  
9 interest Defendants Equity had in being both the declarants/sellers of the Project and the  
10 Project's property manager and the controller of the Association's Board of Directors; i)  
11 failing to disclose to the Association and to unit owners the financial interest Defendants  
12 Equity had in not making the necessary defect and damage repairs at the Project and in  
13 concealing the defects and damage from the Association and unit owners in an effort to save  
14 money and avoid warranty claims during the time they managed the Project and controlled  
15 the Association; and j) grossly understating in the Association's initial budget contained in  
16 the Public Offering Statement the reserves needed to properly repair and maintain the  
17 Project. Defendants Equity and the Balaton individuals further violated the CPA by failing to  
18 disclose to the Association that assets were being distributed from Balaton, and perhaps other  
19 Equity Defendants, to other entities and/or individuals, and that as a result, Balaton was  
20 being rendered insolvent and/or financially unable to properly respond to Association and/or  
21 unit owner warranty claims. The aforementioned unlawful actions and failures to act of  
22 Defendants Equity and the Balaton Individuals had the capacity to and did in fact deceive a  
23 substantial portion of the public at large, are capable of repetition, have been repeated in

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1 Washington and other states, and are currently being repeated in Washington and other  
 2 states. The CPA violations of Defendants Equity and the Balaton Individuals have caused  
 3 injury and continue to cause injury to the Association, its unit owner members and the public  
 4 at large.

5 61. As a direct and proximate result of the CPA violations described above, the  
 6 unit owners and the Association have been damaged in an amount to be proved at trial. Such  
 7 damages include, among other things, the cost of repairing the defects and damage, including  
 8 the necessary investigative costs and repair scope and cost of repair estimate development  
 9 costs, and the loss of use suffered by unit owners as a result of the defects and damage and  
 10 their repair, relocation expenses, diminution in market value of the units and Project as  
 11 whole, consequential damages, and any and all other foreseeable damages. Additionally,  
 12 pursuant to RCW 19.86.090, the Association is entitled to its reasonable attorneys' fees and  
 13 all other costs/expenses incurred in investigating and prosecuting this action. The Association  
 14 is also entitled to an award of *a minimum of \$10,000 per unit in treble damages for each*  
 15 *and every of the 108 Project unit owners.*

16 **H. Eighth Claim – Against Defendants Equity and the Balaton**  
 17 **Individuals for Fraudulent Concealment**

18 62. The Association incorporates herein by reference Paragraphs 1-61 of this  
 19 Complaint.

20 63. This claim is being made against the Balaton Individuals to the extent they  
 21 knowingly participated in, cooperated in the doing of, or directed that the alleged wrongful  
 22 acts of Defendants Equity be committed. *Johnson v. Harrigan-Peach Land Dev. Co.*, 79  
 23 Wn.2d 745, 752, 489 P.2d 923 (1971)

24 64. Despite having an abundance of knowledge, as described above, about the  
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1 existence of serious construction defects, water intrusion, mold growth and other resultant  
 2 property damage at the Project, Defendants Equity and the Balaton Individuals marketed and  
 3 sold Project units without ever disclosing anything about the defects or damage to unit  
 4 purchasers. Many of the defects and much of the damage at issue is hidden within the  
 5 building envelope and other building systems and consequently unit purchasers were  
 6 unaware of the problems and a reasonable inspection by them would not have disclosed the  
 7 same. The concealed defects and damage at issue are severe and substantially reduces the  
 8 Project's value. Because Defendants Equity and the Balaton Individuals failed to inform unit  
 9 purchasers of the hidden defects and damage at the Project and instead concealed the same  
 10 from them, they are liable for fraudulent concealment.

11 65. As a direct and proximate result of the fraud described above, the unit owners  
 12 and the Association have been damaged in an amount to be proved at trial. Such damages  
 13 include, among other things, the cost of repairing the defects and damage, including the  
 14 necessary investigative costs and repair scope and cost of repair estimate development costs,  
 15 and the loss of use suffered by unit owners as a result of the defects and damage and their  
 16 repair, relocation expenses, diminution in market value of the units and Project as whole, the  
 17 difference between the actual value of the units and the Project as a whole and what the units  
 18 and Project would have been worth without the fraudulent concealment, consequential  
 19 damages, and any and all other foreseeable damages. Additionally, pursuant to the  
 20 Declaration, the Association is entitled to its reasonable attorneys' fees and all other  
 21 costs/expenses incurred in investigating and prosecuting this action.

22 **I. Ninth Claim -- Against Defendants Equity for Liability under**  
 23 **RCW 64.34.405, 64.34.410 and 64.34.415**

24 66. The Association incorporates herein by reference Paragraphs 1-65 of this  
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1 Complaint.

2 67. Pursuant to RCW 64.34.405(3), “[a] declarant or dealer shall be liable for any  
3 misrepresentation contained in the public offering statement or for any omission of material  
4 fact therefrom if the declarant or dealer had actual knowledge of the misrepresentation or  
5 omission *or, in the exercise of reasonable care, should have known* of the misrepresentation  
6 or omission.

7 68. Pursuant to RCW 64.34.410(1)(y), a public offering statement shall include  
8 “[a] list of any physical hazards known to the declarant which particularly affect the  
9 condominium or the immediate vicinity in which the condominium is located and which are  
10 not readily ascertainable by the purchaser.”

11 69. Pursuant to RCW 64.34.415(1)(a), “[t]he public offering statement of a  
12 conversion condominium shall contain, in addition to the information required by RCW  
13 64.34.410, [e]ither a copy of a report prepared by an independent, licensed architect or  
14 engineer, or a statement by the declarant based on such report, which report or statement  
15 describes, to the extent reasonably ascertainable, the present condition of all structural  
16 components and mechanical and electrical installations material to the use and enjoyment of  
17 the condominium.

18 70. Pursuant to RCW 64.34.405, Defendants Equity are liable for  
19 misrepresentations in the Project’s Public Offering Statement, including but not limited to,  
20 the following: a) their misrepresentation that there were no physical hazards at the Project  
21 despite the existence of serious and systemic construction defects, including defects in  
22 weather-proofing, structural and life safety systems, and resultant water intrusion and  
23 moisture damage, including mold growth, which were known to them and which were

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1 therefore required to be disclosed under RCW 64.34.410; b) their failure to provide a report  
 2 by an independent, licensed architect or engineer based on an inspection of the Project that  
 3 *reasonably* ascertained the condition of all structural components and mechanical and  
 4 electrical installations material to the use and enjoyment of the condominium, and instead  
 5 providing a report based on a grossly inadequate and unreasonable visual-only inspection; c)  
 6 their misrepresentations that all structural components and mechanical systems of all  
 7 buildings are substantially completed, that the Project is in good condition, well maintained,  
 8 and that the workmanship is good and the materials used were appropriate; and d) their  
 9 misrepresentations about the cost to operate and repair and maintain the Project. Had the  
 10 Project's Public Offering Statement contained the aforementioned negligent  
 11 misrepresentations, the Association and its unit owner members would have been able to  
 12 avert property damage that occurred and is currently occurring as a result.

13         71. As a direct and proximate result of the misrepresentations described above,  
 14 the unit owners and the Association have been damaged in an amount to be proved at trial.  
 15 Such damages include, among other things, the cost of repairing the defects and damage,  
 16 including the necessary investigative costs and repair scope and cost of repair estimate  
 17 development costs, and the loss of use suffered by unit owners as a result of the defects and  
 18 damage and their repair, relocation expenses, diminution in market value of the units and  
 19 Project as whole, consequential damages, and any and all other foreseeable damages.  
 20 Additionally, pursuant to the Declaration, the Association is entitled to its reasonable  
 21 attorneys' fees and all other costs/expenses incurred in investigating and prosecuting this  
 22 action.

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**J. Tenth Claim – Against Defendants Equity and the Balaton  
Individuals for Violation of RCW 19.40.041 and 19.40.051**

72. The Association incorporates herein by reference Paragraphs 1-71 of this Complaint.

73. The Association is informed and believes, and on that basis alleges, that Defendants Equity and the Balaton Individuals have engaged in improper conveyances in violation of RCW 19.40.041 and 19.40.051 in that:

a. They have transferred and/or caused to be transferred assets from Balaton to the other Equity Defendants and/or to the Balaton Individuals and/or possibly other related business entities and/or individuals without receiving a reasonably equivalent value in exchange for the transfer or obligation and Balaton: (i) was engaged or was about to engage in a business or transaction for which its remaining assets were unreasonably small in relation to the business or transaction; or (ii) intended to incur, or believed *or reasonably should have believed* that it would incur debts beyond its ability to pay them as they became due; and/or

b. The transfers were made or the obligations were incurred without receiving a reasonably equivalent value in exchange for the transfer or obligation and Balaton was insolvent at the time or became insolvent as a result of the transfer or obligation; and/or

c. The transfers were made to an insider for an antecedent debt, Balaton was insolvent at the time, and the insider had reasonable cause to believe that Balaton was insolvent.

74. The creditor Association has been harmed by the above-described transfers in that they have rendered Balaton asset-less or without assets sufficient to honor its warranty obligations to and satisfy the Association's claims against it.

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1           75. As a result of the improper conveyances, the Association is entitled to all of  
2 the remedies set forth in RCW 19.40.071 and 19.40.081, including but not limited to:

3           a. Avoidance of the transfer or obligation to the extent necessary to satisfy the  
4 Association's claim; and

5           b. An injunction against further disposition of the assets transferred or of other  
6 property.

7           **K. Eleventh Claim – Against Defendants Equity for Mutual Mistake**

8           76. The Association incorporates herein by reference Paragraphs 1-75 of this  
9 Complaint.

10          77. At the time of the sale of all the units at the Project, each and every unit  
11 purchaser believed that they were purchasing units that had been constructed in accordance  
12 with the Project's approved plans and specifications and the applicable building codes.  
13 Because that belief was mistaken, in that the Project is in fact riddled with deviations from its  
14 approved plans and specifications and violations of the applicable building codes, and  
15 because Defendants Equity never disclosed those deviations and violations to unit  
16 purchasers, each and every unit purchaser entered into their unit purchase and sale  
17 agreements mistaken about material facts regarding the true construction and condition of the  
18 Project. If and to the extent Defendants Equity also lacked knowledge regarding the  
19 aforementioned deviations and violations, they too entered into the unit purchase and sale  
20 agreements mistaken about material facts regarding the same. If either the unit purchasers or  
21 Defendants Equity had been aware of their mistaken belief of material facts regarding the  
22 deviations from the Project's approved plans and specifications and violations of the  
23 applicable building code violations that existed at the Project at the time the units were being

1 sold, neither would have entered into the unit purchase and sale agreements. Consequently,  
 2 unit owners are entitled to damages and/or equitable relief, including rescission of their  
 3 purchase and sale agreements.

4 **L. Twelfth Claim – Against Defendants Equity for**  
**Alter Ego/Corporate Disregard Liability**

5 78. The Association incorporates herein by reference Paragraphs 1-77 of this  
 6 Complaint.

7 79. The Association is informed and believes, and on that basis, alleges that  
 8 Balaton is an alter ego of Equity and/or ERP and/or Equity Residential and/or that Equity and  
 9 ERP and/or Equity Residential are alter egos of one another and that their separate corporate  
 10 form should be disregarded for the following reasons:

- 11 a. The liability-causing activity at issue did not occur only for the benefit of  
 12 Balaton or Equity.
- 13 b. Balaton has been “gutted” and left without funds by the other Equity  
 14 Defendants controlling it in order to avoid actual or potential liability.
- 15 c. Balaton was inadequately capitalized and maintained insubstantial assets and  
 16 was just another one of the hollow-shell entities created, deliberately grossly  
 17 under-funded, and then gutted by the Equity Defendants as part of their  
 18 nationwide unlawful planned pattern of conduct to profit from turning  
 19 knowingly defect and damage ridden apartments into condominium  
 20 conversions for sale. Defendants Equity, the Balaton Individuals and possibly  
 21 other related entities and/or individuals used Balaton and the other single  
 22 project entities it used for its condominium conversion scheme purely as  
 23 “front companies” to serve as “paper declarants” for the projects and as unit

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1 sellers. Then, at the conclusion of the projects, the shell, paper declarant front  
2 companies would be drained of any and all assets held by them and would be  
3 deliberately left with no money to honor their warranty and other obligations  
4 owed to project unit purchasers and to the various condominium associations.

- 5 d. Balaton was a "shell," an "artificial corporate device," and a "hollow  
6 instrument or conduit" for conducting a single venture or business and was  
7 "puppeteered," directed and controlled by the other Equity Defendants solely  
8 for the purpose of maximizing profit, averting legitimate claims and  
9 minimizing liability with respect to that single venture or business;
- 10 e. Balaton's allegedly separate shell corporate form was intentionally used by  
11 the other Equity Defendants to violate or evade duties and/or other legal  
12 obligations owed to the Association and its unit owner members;
- 13 f. They have commingled funds and other assets;
- 14 g. They have failed to segregate funds of the allegedly separate entities.
- 15 h. They have transferred funds and/or other assets, including the Project as a  
16 whole and Project units, between themselves with no substantial business  
17 justification and without adequate compensation;
- 18 i. They have allowed the staff and other assets of one or more of them to be used  
19 by the other(s) without adequately compensating the other alter ego(s) whose  
20 staff and other assets have been used;
- 21 j. They have treated the assets of one another as their own;
- 22 k. They have failed to maintain proper or adequate corporate records;

1. The equitable ownership of the allegedly separate corporations was in the same entity or individual;
- m. They shared the same members, directors, officers and supervising employees;
- n. They shared the same office;
- o. They failed to maintain an arms' length relationship with each other; and
- p. It would be unjust and inequitable to allow them to use their allegedly separate corporate status as a shield to insulate them from liability for their obligations owed to the Association and the unit owners.

#### **IV. PRAYER FOR RELIEF**

WHEREFORE, the Association prays for judgment as follows:

1. Against Defendants Equity collectively, and each of them, for damages and/or equitable relief according to proof for:
  - a. Breach of Express and Implied Warranty under the WCA;
  - b. Breach of Purchase and Sale Agreement Contracts;
  - c. Breach of Property/Real Estate Management Contract;
  - d. Negligent Property/Real Estate Management;
  - e. Breach of Fiduciary Duty;
  - f. Liability under RCW 64.34.344 and the Declaration;
  - g. Violation of the CPA, *including treble damages of a minimum of \$10,000 per unit for each and every one of the 108 Project unit owners, and injunctive relief to enjoin any further CPA violations pursuant to RCW 19.86.090;*

- j. Fraudulent Concealment;
- k. Liability under RCW 64.34.405, 64.34.410 and 64.34.415;
- l. Liability under RCW 19.40.041 and 19.40.051, including avoidance of all improper transfers or obligations to the extent necessary to satisfy the Association's claims and for an injunction against further disposition of the assets transferred or of other property;
- m. Mutual Mistake;
- n. Alter-Ego/Corporate Disregard Liability;
- o. For taxing of costs, including all attorneys' fees and all other costs/expenses incurred; and
- p. Such other and further relief that the Court may deem just and equitable.

2. Against Defendants Attleson, Wiemer and Himmerich, collectively, and each of them, for damages according to proof for:

- a. Breach of Fiduciary Duty;
- b. For taxing of costs, including all attorneys' fees and all other costs/expenses incurred; and
- c. Such other and further relief that the Court may deem just and equitable.

3. Against Defendants the Balaton Individuals for damages according to proof for:

- a. Violation of the CPA, *including treble damages of a minimum of*

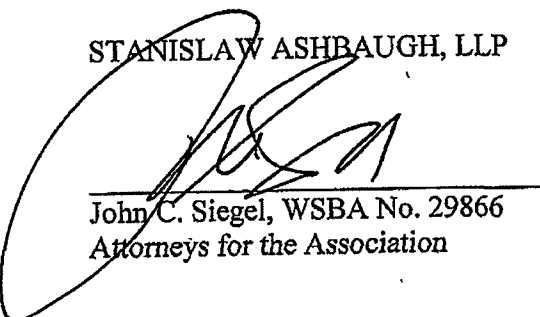


*\$10,000 per unit for each and every one of the 108 Project unit owners, and injunctive relief to enjoin any further CPA violations pursuant to RCW 19.86.090;*

- b. Fraudulent Concealment;
  - c. Liability under RCW 19.40.041 and 19.40.051, including avoidance of all improper transfers or obligations to the extent necessary to satisfy the Association's claims and for an injunction against further disposition of the assets transferred or of other property;
  - d. For taxing of costs, including all attorneys' fees and all other costs/expenses incurred; and
  - e. Such other and further relief that the Court may deem just and equitable.
4. For Declaratory Judgment as to all Defendants that the cap on treble damages under the CPA is unconstitutional under Washington law.

DATED this 1<sup>st</sup> day of May, 2007.

STANISLAW ASHBAUGH, LLP

  
John C. Siegel, WSBA No. 29866  
Attorneys for the Association

# Exhibit 1

## SCHEDULE B

## BALATON CONDOMINIUM

## Unit Data, Allocated Interests, Parking Assignments

Building	Unit	Unit Data*	Level	Unit Area (Sq Ft)	CEL ICE <sup>U</sup>	Parking <sup>U</sup>	Voting
A	101	2BR, 1BA, F	1	847	0.93		1
A	102	2BR, 2BA, F	1	910	1.00		1
A	103	2BR, 2BA, F	1	910	1.00		1
A	104	2BR, 1BA, F	1	847	0.93		1
B	105	2BR, 1BA, F	1	847	0.93		1
B	106	2BR, 2BA, F	1	910	1.00		1
B	107	2BR, 2BA, F	1	910	1.00		1
B	108	2BR, 1BA, F	1	847	0.93		1
C	109	2BR, 2BA, F	1	910	1.00		1
C	110	2BR, 2BA, F	1	910	1.00		1
C	111	2BR, 1BA, F	1	847	0.93		1
D	112	2BR, 2BA, F	1	910	1.00		1
D	113	2BR, 2BA, F	1	910	1.00		1
D	114	2BR, 1BA, F	1	832	0.92		1
D	115	2BR, 1BA, F	1	832	0.92		1
E	116	2BR, 1BA, F	1	847	0.93		1
E	117	1BR, 1BA, F	1	704	0.78		1
E	118	1BR, 1BA, F	1	704	0.78		1
E	119	1BR, 1BA, F	1	704	0.78		1
E	120	1BR, 1BA, F	1	704	0.78		1
G	121	2BR, 2BA, F	1	910	1.00		1
G	122	2BR, 2BA, F	1	910	1.00		1
G	123	2BR, 1BA, F	1	832	0.92		1
G	124	2BR, 1BA, F	1	832	0.92		1
H	125	2BR, 1BA, F	1	847	0.93		1
H	126	2BR, 2BA, F	1	910	1.00		1
H	127	2BR, 2BA, F	1	910	1.00		1
H	128	2BR, 1BA, F	1	847	0.93		1
J	129	2BR, 1BA, F	1	847	0.93		1
J	130	2BR, 2BA, F	1	910	1.00		1
J	131	2BR, 2BA, F	1	910	1.00		1
J	132	2BR, 1BA, F	1	847	0.93		1
K	133	2BR, 1BA, F	1	847	0.93		1
K	134	2BR, 2BA, F	1	910	1.00		1
K	135	2BR, 2BA, F	1	910	1.00		1
K	136	2BR, 1BA, F	1	847	0.93		1
L	137	1BR, 1BA, F	1	704	0.78		1
L	138	1BR, 1BA, F	1	704	0.78		1
L	139	1BR, 1BA, F	1	704	0.78		1
L	140	1BR, 1BA, F	1	704	0.78		1
L	141	1BR, 1BA, F	1	704	0.78		1
L	142	1BR, 1BA, F	1	704	0.78		1
A	201	2BR, 1BA, F	2	847	0.93		1
A	202	2BR, 2BA, F	2	910	1.00		1
A	203	2BR, 2BA, F	2	910	1.00		1
A	204	2BR, 1BA, F	2	847	0.93		1

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SCHEDULE B, PAGE 1 OF 3

Building	Unit	Unit Data*	Level	Unit Area (Sq Ft)	CEL ICE <sup>u</sup>	Parking <sup>2</sup>	Voting
B	205	2BR, 1BA, F	2	847	0.93		1
B	206	2BR, 2BA, F	2	910	1.00		1
B	207	2BR, 2BA, F	2	910	1.00		1
B	208	2BR, 1BA, F	2	847	0.93		1
C	209	2BR, 2BA, F	2	910	1.00		1
C	210	2BR, 2BA, F	2	910	1.00		1
C	211	2BR, 1BA, F	2	847	0.93		1
D	212	2BR, 2BA, F	2	910	1.00		1
D	213	2BR, 2BA, F	2	910	1.00		1
D	214	2BR, 1BA, F	2	832	0.92		1
D	215	2BR, 1BA, F	2	832	0.92		1
E	216	2BR, 1BA, F	2	847	0.93		1
E	217	1BR, 1BA, F	2	704	0.78		1
E	218	1BR, 1BA, F	2	704	0.78		1
E	219	1BR, 1BA, F	2	704	0.78		1
E	220	1BR, 1BA, F	2	704	0.78		1
G	221	2BR, 2BA, F	2	910	1.00		1
G	222	2BR, 2BA, F	2	910	1.00		1
G	223	2BR, 1BA, F	2	832	0.92		1
G	224	2BR, 1BA, F	2	832	0.92		1
H	225	2BR, 1BA, F	2	847	0.93		1
H	226	2BR, 2BA, F	2	910	1.00		1
H	227	2BR, 2BA, F	2	910	1.00		1
H	228	2BR, 1BA, F	2	847	0.93		1
J	229	2BR, 1BA, F	2	847	0.93		1
J	230	2BR, 2BA, F	2	910	1.00		1
J	231	2BR, 2BA, F	2	910	1.00		1
J	232	2BR, 1BA, F	2	847	0.93		1
K	233	2BR, 1BA, F	2	847	0.93		1
K	234	2BR, 2BA, F	2	910	1.00		1
K	235	2BR, 2BA, F	2	910	1.00		1
K	236	2BR, 1BA, F	2	847	0.93		1
L	237	1BR, 1BA, F	2	704	0.78		1
L	238	1BR, 1BA, F	2	704	0.78		1
L	239	1BR, 1BA, F	2	704	0.78		1
L	240	1BR, 1BA, F	2	704	0.78		1
L	241	1BR, 1BA, F	2	704	0.78		1
L	242	1BR, 1BA, F	2	704	0.78		1
C	309	2BR, 2BA, F	3	910	1.00		1
C	310	2BR, 2BA, F	3	910	1.00		1
C	311	2BR, 1BA, F	3	847	0.93		1
D	312	2BR, 2BA, F	3	910	1.00		1
D	313	2BR, 2BA, F	3	910	1.00		1
D	314	2BR, 1BA, F	3	832	0.92		1
D	315	2BR, 1BA, F	3	832	0.92		1
G	321	2BR, 2BA, F	3	910	1.00		1
G	322	2BR, 2BA, F	3	910	1.00		1
G	323	2BR, 1BA, F	3	832	0.92		1
G	324	2BR, 1BA, F	3	832	0.92		1
H	326	2BR, 1BA, F	3	910	1.00		1
H	327	2BR, 1BA, F	3	910	1.00		1
J	329	2BR, 1BA, F	3	847	0.93		1

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SCHEDULE B, PAGE 2 OF 3

Building	Unit	Unit Data*	Level	Unit Area (Sq Ft)	CEL ICE <sup>1/</sup>	Parking <sup>2/</sup>	Voting
J	330	2BR, 2BA, F	3	910	1 00		1
J	331	2BR, 2BA, F	3	910	1 00		1
J	332	2BR, 1BA, F	3	847	0 93		1
K	333	2BR, 1BA, F	3	847	0 93		1
K	334	2BR, 2BA, F	3	910	1 00		1
K	335	2BR, 2BA, F	3	910	1 00		1
L	338	1BR, 1BA, F	3	704	0 83		1
L	339	1BR, 1BA, F	3	704	0 83		1
L	340	1BR, 1BA, F	3	704	0 83		1
L	341	1BR, 1BA, F	3	704	0 83		1
TOTALS.				90,636	100 00		108

## \* Legend

BR - bedroom

BA - bathroom

F - wood fireplace

<sup>1/</sup>Common Expense Liability (CEL) and interest in Common Elements (ICE) is based on relative area of Units

<sup>2/</sup>To be assigned by amendment

# **EXHIBIT B**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

BALATON CONDOMINIUM ASSOCIATION, a  
Washington nonprofit corporation,

Plaintiff,

v.

BALATON CONDOMINIUM, LLC, a Delaware  
limited liability company; EQUITY  
RESIDENTIAL PROPERTIES MANAGEMENT  
CORP., a Delaware corporation; ERP  
OPERATING LIMITED PARTNERSHIP, an  
Illinois limited partnership; EQUITY  
RESIDENTIAL, a Maryland real estate investment  
trust; DAVID ATTLESON, individually, and  
JANE DOE ATTLESON, individually, and the  
marital community composed thereof; SUSAN  
WIEMER, individually, and JOHN DOE  
WIEMER, individually, and the marital  
community composed thereof; AMY  
HIMMERICH, individually, and JOHN DOE  
HIMMERICH, individually, and the marital  
community composed thereof; TAMMY  
SCULLY, individually, and JOHN DOE  
SCULLY, individually, and the marital community  
composed thereof; MARK GOLDSTEIN,  
individually, and JANE DOE GOLDSTEIN,  
individually, and the marital community composed  
thereof; MICHAEL MCHUGH, individually, and  
JANE DOE MCHUGH, individually, and the  
marital community composed thereof; NATALIA  
PICOULAS, individually, and JOHN DOE  
PICOULAS, individually, and the marital  
community composed thereof; JOHN DRYK,  
individually, and JANE DOE DRYK, individually,  
and the marital community composed thereof;

**Honorable Michael Hayden**

No. 07-2-14061-1 SEA

**NOTICE OF FILING REMOVAL  
OF CIVIL ACTION**

NOTICE OF FILING REMOVAL OF CIVIL ACTION - 1

**FOSTER PEPPER PLLC**  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700



1 MARK PARRELL, individually, and JANE DOE  
2 PARRELL, individually, and the marital  
3 community composed thereof; ROBERT  
4 TANAKA, individually, and JANE DOE  
5 TANAKA, individually, and the marital  
6 community composed thereof; BARBARA  
SHUMAN, individually, and JOHN DOE  
SHUMAN, individually, and the marital  
community composed thereof; and DOES 1-50,  
  
Defendants.

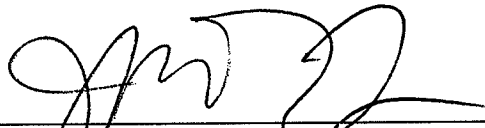
7 TO: THE CLERK OF THE COURT:

8 AND TO: John C. Siegel, Attorney for Plaintiff


9 Notice is hereby given that Defendants, pursuant to 28 U.S.C. § 1446(d), have removed  
10 this case to the United States District Court for the Western District of Washington at Seattle. A  
11 true and accurate copy of the Notice of Removal of Civil Action is attached hereto. This  
12 removal terminates this Court's jurisdiction and all proceedings in this forum.

13 DATED this 21st day of May, 2007.

14 FOSTER PEPPER PLLC

15   
16 \_\_\_\_\_  
17 Jeffrey G. Frank WSBA #16287  
18 Gregory A.V. Clark, WSBA #28832  
19 Attorneys for Defendants Balaton  
20 Condominium, LLC, Equity Residential  
Properties Management Corp., ERP Operating  
Limited Partnership, and Equity Residential

21 HARPER | HAYES PLLC

22   
23 \_\_\_\_\_  
24 Todd C. Hayes, WSBA No. 26361  
25 Gregory L. Harper, WSBA No. 27311  
26 Attorneys for Defendants Balaton  
Condominium, LLC, Equity Residential  
Properties Management Corp., ERP Operating  
Limited Partnership, and Equity Residential

NOTICE OF FILING REMOVAL OF CIVIL ACTION - 2

FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

Certificate of Service

The undersigned certifies that on Monday, May 21, 2007, I caused to be served the foregoing document to:

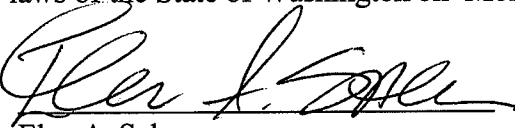
John C. Siegel  
Jesse D. Miller  
Stanislaw Ashbaugh, LLP  
4400 Columbia Center  
701 Fifth Avenue  
Seattle, WA 98104-7012  
BUSINESS (206) 386-5900  
FAX (206) 344-7400

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<input type="checkbox"/>
<input type="checkbox"/>
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via hand delivery  
via first class mail, postage prepaid  
via facsimile  
via e-mail

Counsel for Balaton  
Condominium Association

I declare under penalty of perjury under the laws of the State of Washington on Monday, May 21, 2007, at Seattle, Washington.

  
Elen A. Sale

NOTICE OF FILING REMOVAL OF CIVIL ACTION - 3

FOSTER PEPPER PLLC  
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PHONE (206) 447-4400 FAX (206) 447-9700